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MEMOIRS OF A MAGISTRATE
OR
CRIME OF ALL DESCRIPTIONS

By
SENEX

ALLAHABAD
THE INDIAN PRESS LTD.

1947

**Printed and published by
K. Mittra, at The Indian Press Ltd.,
Allahabad.**

PREFACE

The author of this book has for thirty-three years been a magistrate in the United Provinces. In it he relates his experiences of crime and criminals, though with many names disguised.

The arrangement of the cases is mostly in accordance with the Indian Penal Code.

All who have studied that statute must admire its comprehensiveness and its clarity. In a few chapters an attempt has been made to present its provisions in popular language.

This book is not meant for lawyers as such. But portions may be found useful by them and by those who preside over courts.

In the main, however, it is meant for the general reader. Its object is first to amuse and then to instruct.

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BOOK I

OFFENCES AGAINST THE HUMAN BODY

PART I

MURDER AND KINDRED OFFENCES

I

MURDER AND KINDRED OFFENCES

Homicide is culpable if committed with the intention of causing death or some injury likely to cause death. It may or may not amount to murder.

Speaking in untechnical language it amounts to murder, unless committed

- a. On grave and sudden provocation.
- b. In the heat of passion on a sudden quarrel.
- c. In exercise of the right of private defence, even if the right is exceeded.
- d. By a public servant in the discharge of his duties, even if he exceeds his powers.

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Murder (Sec 302 I. P. C.) is punishable with death or transportation for life. No lighter sentence is permissible. A court which inflicts only the

lighter penalty must give reasons for not inflicting the severer one. (Sec. 367 (5) I. P. C.)

Murder by a life convict (Sec 303 I.P.C.) is punishable by death alone. This is the only offence for which death, and death alone, may be the penalty.

Culpable homicide not amounting to murder (sec. 304 I.P.C.) is punishable with transportation for life or imprisonment up to ten years.

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Causing death by a rash or negligent act is not culpable homicide ; but is punishable with up to two years imprisonment (sec. 304 A I.P.C.)

There is, naturally, no penalty for suicide. But an attempt is punishable with one year's simple imprisonment (sec. 309 I.P.C.); and as abetment (secs. 305 and 306 I.P.C.) with anything up to transportation for life.

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Secs. 312 to 316 I.P.C. deal with miscarriages. Concealment of birth by secret disposal of the dead body comes under sec. 318 I.P.C.

Sec. 317 I.P.C. penalises the exposure and abandonment of a child below twelve years of

age. If death results, the offence is dealt with as murder.

II

ZAN-ZAMIN-ZAR

There is much truth in the Persian proverb that three Z's are responsible for most of the trouble in the world, zan-zamin-zar, that is woman, land and money. One or other of these causes will be found at work in most of the cases I shall presently describe.

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Most homicides on account of property are committed in the course of riots on the land itself. They usually come under the category of culpable homicide not amounting to murder, and I shall consider them when I speak of riots.

A remarkable example of how a litigation led to a cold-blooded murder came to my knowledge through a confession by one, Lachhman barhai, which I recorded many years ago. A precis of the whole confession will be found in Chapter VIII of the Part of this book devoted to Dacoities.

III

AN UNNATURAL FATHER

Gokul had little affection for his wife and for the child she had borne him. In fact he looked on them as a hindrance to his amours with other women. The whole village was disturbed about it; and one day Gokul announced his intention of migrating elsewhere.

Early next morning he left the village, followed by his wife and infant child. When some miles out they stopped at a well. It was half a mile or less from a metalled road; but that road was little frequented. There were no habitations nearby.

At this well, Gokul proceeded to carry out his fell purpose. He drew out a knife and tried to slit his wife's throat. Her cries and attempts to save herself, disturbed the child. Gokul let her go; and picking up the infant, dashed it against the ground. Thus killing it, he flung the body into the well and shoved the mother in after it. And then he went his way.

Fortunately the well had long been neglected. It was not deep; and there was little water in it. The woman managed to scramble out. She dragged herself to the roadside; and there sat weeping.

A wayfarer (whose identity was never discovered) spoke to her. She bade him proceed to her brother's village, and tell him that his sister was in great trouble. This the mysterious stranger did. The brother came and took his unhappy sister to the police.

This was an appalling crime. I committed Gokul to the Court of Session ; and later presided at his execution. It was the first I saw ; and I can still picture the scene. But I felt no compassion at all for the man. If truth be told, I feared to the end that he might be reprieved to join the army as he had requested.

IV

PARENTAL VANITY

Babu Lal led a wandering existence. He took as his companion a remarkably intelligent lad of about twelve or fourteen. I forget his name, but shall call him Banwari. One day they met a little boy of two or three years ; perhaps his name was Radha Krishna. He was wearing silver bangles and anklets.

This excited Babu Lal's cupidity. He made friends with the little boy by giving him sweets

to eat ; and then carried him away on his shoulders. After some miles he relieved him of his ornaments; and threw him into a well.

A few days later Babu Lal and Banwari somehow separated ; and the latter fell into the hands of the police. To them he told the story in great detail ; and repeated the same to me.

He was remanded to police custody ; and guided the investigating officer to all the places mentioned in his confession. Corroborative evidence was thus secured. The body of the infant Radha Krishna was fished out from the well.

After some days Babu Lal was arrested ; and, of course, denied everything. While before me he displayed a certain vanity as to his personal appearance. He desired he be allowed to change his cap as he felt ashamed of being seen with the shabby one he was wearing.

Eventually he was sentenced to death. I was present at his execution, the third I witnessed. I cannot say I felt the slightest pity for him.

V

A GHASTLY CASE

The passion with some Indian parents to load their children with jewellery accounts for many

became a dead letter. In the last chapter I have spoken of the unhappy result of such parental vanity. Here is an even more ghastly case.

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A woman of loose character had several paramours. One day she with two of them was seated at her house. Two little girls, aged six and eight years, passed by. The miscreants called them in, and removed their jewellery. Then to cover their guilt, the elder girl was slaughtered with a knife. When the younger one begged for pity, she was cut down as well. Somewhat later their bodies were surreptitiously carried out; and thrown on to a rubbish heap.

The parents made a search for their children; and next morning the mutilated bodies were found. The village dogs had already got at them. One of the men confessed to the police; so did the woman. The woman was brought before me, and informally admitted she had done so. But the following morning, when I interviewed her in the jail, she denied everything. I remember trying to persuade her to confess, which was really acting against the law. One of the miscreants was still absconding when I left the district. This was one of the most terrible cases I have known; but I fear the culprits must have escaped justice.

murders. In the days when the District Magistrate was also Chairman of the District Board, an officer who held the dual capacity, issued an order that no child wearing ornaments should be enrolled in a rural school. This sound order soon

VI

CHERCHES LA FEMME

The French expression, *cherchez la femme*, is of universal application. I can remember no striking case of a man being murdered because of his association with a particular woman.

I can think, however, of some cases where a man was assassinated because of general immorality. One was a mahant, who was waylaid and beaten to death. He was supposed to be a celibate; but in fact 'no one's sister or daughter was safe from him.'

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A husband and a wife could not get on. He knew, and the village knew, that she was carrying on an intrigue with another man. One day the husband caught them behind a hedge in flagrante delicto. The paramour showed a clean pair of

heels. The woman turned on her husband and abused him.

What followed is best described in his own words. "I caught her by the hair, and with my gandasa (or heavy chopper) struck her two blows on the nape of her neck. Then I twisted her round and slashed her throat". This decapitated her; and the maddened husband, holding the woman's head by its tresses, carried it to the police station some six miles away.

The consternation of the thana staff can well be imagined. The husband lodged a report of the murder he had himself committed; and held to his confession to the end. I sent him up to the Court of Session; but left the district before judgment was pronounced. A year later I revisited my old district; and enquired how the case had ended. But no one could remember. So short is public memory.

VII

A MULTIPLE MURDER

The following story comes from a hill district I know well. I adapt a report from a newspaper.

Nain Singh lived in Pathorora near Dadamandi. He had an intimacy with Mt. Pavitra of a neighbouring village; and was greatly infuriated when she wanted to live with one Kashi Ram of village Dundekh.

On the morning of the 15th he appeared suddenly at the house of Kashi Ram, and attacked him with a kukri. Kashi Ram fell unconscious on the first stroke. Leaving him for dead, Nain Singh next attacked Mt. Pavitra, whom also he left unconscious. Some persons ran up to the spot; but Nain Singh killed Kashi Ram's son aged 27 years, his grand-daughter aged five, and another girl of fifteen.

After this he proceeded to Dadamandi Bazar. When people saw him coming with two blood-stained kukries, they fled for their lives, and the shops were deserted.

From Dadamandi, he moved towards Dogadda. On the way he killed Jagat Singh, shop-keeper of Mitiyali. Next he disposed of another shop-keeper, Ram Prasad, and his wife. Their son Lallu was wounded across his cheek; but saved his life by flying across the flooded river.

Nain Singh then proceeded to Goriya, where he made short work of Jaman Singh and his grand-daughter aged five years.

After these 'achievements', he retraced his steps towards Dadamandi. On the way he killed another man and his daughter. Their corpses, having been thrown down the precipice, were carried by the flooded river right down to Dogadda.

Nain Singh then returned to his village Pathorora and remained quiet for the rest of the day. At night, he determined to wreak his vengeance on other enemies. He went stealthily to the hamlet of the Shilpkars of his own village. One by one he despatched four men and a woman, and wounded a few others.

Next morning he revisited Dundekha, and brought the wounded and bleeding Pavitra to his village. There they remained the whole day.

The story of these cold-blooded murders spread apace. Practically all the neighbouring villages were deserted; and for two days no one travelled on the road from Dogadda to Dwarikhal.

The Patwari of Pattis Langur and Sila did not dare to approach Nain Singh. So the regular police from Dogadda was requisitioned.

The Deputy Superintendent of Police with a posse of constables and court-orderlies proceeded to the spot on the afternoon of the 16th; and about 6 p.m. arrested Nain Singh at his own house. He was placed in Dogadda lock-up for the night.

The culprit, the dead bodies and the wounded were brought in three lorries to subdivisional headquarters on the 17th.

This tale of ghastly murders had spread wonder and consternation throughout the district. The murders appear to have been well planned. With 13 killed and 5 wounded, the story is unprecedented in the history of crime. Nain Singh is said to have declared that he would have murdered yet another half dozen, had he not been arrested.

VIII

A JUDICIAL MURDER

A man sleeping outside was hacked to death one night. The villagers ran up on hearing the noise, and professed to have recognised the two murderers fleeing into the darkness.

The two men they professed to recognise were undoubtedly old enemies of the deceased; but their identification was far from satisfactory. It became less so when the witnesses admitted that these two men had been among those who had ran up to the murdered man at the first out cry.

Their guilt then seemed all but disproved;

but in view of the evidence of enmity, I committed both to the Court of Session.

The Judge, a Hindu gentleman, was always out to impress his strength on all. If a junior court remarked that a case was strong, he acquitted it. If he said it was weak, he convicted. The latter is what happened on this occasion.

Unfortunately for the two accused, there then sat on the bench of the supreme court, a judge, who followed one simple maxim in criminal cases. It was that any evidence was good enough to convict a man. He accordingly confirmed the sentences of death.

I saw the two men in the condemned cells; and candidly I felt as though I was assisting at a judicial murder. I was not at the execution; but heard that, unlike most condemned men, who go quietly to the gallows, these two protested their innocence to the last.

The case left a deep impression on me. I resolved that thereafter I would never commit a man accused of murder to the Court of Session, unless I was absolutely certain of his guilt.

IX

CULPABLE HOMICIDE NOT AMOUNTING
TO MURDER

Section 304 of the Indian Penal Code deals with culpable homicide not amounting to murder. Most such offences are committed in the course of riots; and these will be dealt with elsewhere.

When a death is caused, the police always prosecute for murder. But on occasions the trial proves the offence to be only one of simple or grievous hurt.

This occurs oftenest when the victim has an enlarged spleen, which is not evident to a layman. A kick or a blow with a lathi, ordinarily causes only simple hurt; but in such cases it may rupture the spleen, and so cause death. Such offences are convicted under Sec. 323 I. P. C., that is as simple hurt; but the usual punishment is imprisonment.

Most magistrates have experience of such cases. I remember one in my very early days where a man thus killed his wife by striking her

below the waist with a stick. • He was genuinely sorry ; but the Judge gave him six months.

I also have a hazy recollection of a case in Sitapur, where two men struck another a lathi blow on the leg. The wound was neglected ; and gangrene set in. The man died ; and the police sent up the two assailants under sec. 304 I. P. C. But the blow could not possibly have been a lethal one ; and I convicted only under either sec. 323 or 325 I. P. C.

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In the days before Cantonments were fitted with electricity, there were many cases where soldiers assaulted punkha-coolies. The doctor in almost all cases found death had been caused by rupture of an enlarged spleen. This was often the subject of comment in certain quarters.

I also remember a case in the High Court, in which a soldier killed a man in a drunken fit. The fact of his intoxication would not have saved him from a charge of murder, unless he had been forced to drink (Sec. 35 I. P. C.) This had not been the case. The Chief Justice awarded the soldier penal servitude for life ; but made a recommendation for clemency to the Local Government.

X

TROUBLES OF MOTORISTS

I have long felt, even before I owned a car and learnt to drive, that motorists are unfairly treated, when it comes to accidents. No matter what he does or what the circumstances, the driver is held to blame. He expects, at least, common sense from the man in front of him ; but that man often acts in a perfectly idiotic manner.

Often and often I have known people to rush across a road when a car is close on them. This is really an attempt at suicide ; and it would do no harm if such people were killed. But the man who should be arrested and hung, drawn and quartered on the spot, is he who keeps his cycle, ekka or cart on the wrong side of the road ; and then, when the motorist is almost on him and has decided to overtake him on the left, calmly moves to the proper side.

So far as lorries and buses are concerned, they do not often exceed the speed limit. I see no point in excessive strictness about overloading, unless people are allowed to stand on the footboards or to sit on the roof. This should be sternly suppressed. The lighting regulations

should also be enforced. Otherwise, I do think lorry drivers should be left alone.

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It is often a difficult matter to determine whether a vehicle was being rashly driven. So long as a man can pull up in reasonable time he can scarcely be held to blame. I have a recollection of a case I had before me. The car was being driven slowly; but the brakes did not act quickly enough. The car went just beyond where it should have stopped, and there was an accident. When examined, the brakes were found to be slightly defective.

Two views were now possible. Either it was a pure accident; or the driver, knowing the brakes to be defective, should have been doubly cautious. I believe I held the former view. The man had not been driving fast; and there is no golden scale to decide at what point speed degenerates into rashness.

XI

A TERRIBLE ACCIDENT

A ghastly motor accident occurred while I was at Ranikhet. The motor terminus was at the upper end of a hair-pin bend. When the bus was

immediately below the terminus, it halted to drop two men. After it had restarted however the two men decided to go on; and, unknown to the driver, climbed on to the tool-box on the left side of the bus.

As the bus approached the terminus, a man in front refused to make way; and the driver hugged the hill-side to the left. Suddenly there was a crash and cry. The two men on the tool-box had been jammed between it and a jutting rock. One was quite flattened out, and died instantaneously. The other had his leg crushed; and died shortly after I recorded his dying statement. He blamed nobody for the accident.

The police prosecuted the driver under sec. 304A. But since he was unaware of the two men being on the tool-box, he could hardly be held to blame. I discharged him. But ever after I rigorously punished drivers who allowed people to travel on the foot-boards and the roof of a bus.

XII

MAD ELEPHANT

It happened at Paska fair in Gonda district. An elephant, which had for some time past shown

signs of distemper, suddenly went mad. Despite the best efforts of the mahout, it gored a man to death. After that he was secured. The mahout was prosecuted under sec. 304 A I. P. C. on the ground that he should not have taken out the elephant at all. Eventually I acquitted him.

An elephant went mad at the Kumbh Mela of 1930. My brother figured in this episode; and I adapt the following account which appeared in a newspaper.

“An incident in the afternoon disturbed a quiet day at the Mela, and but for the pluck shown by some officers, a great disaster would have resulted.

“As the Bara Panchaiti Akhara was on its return journey on the Jumna Patti, a male elephant in the procession ran amok. The first sign it gave of madness was when it rushed at a female. The mahout fell on to a crowd of spectators, injuring a man on top of his head.

“Camels were set against the beast in the belief that the only animal of which a mad elephant is afraid is the camel. Driven by them the elephant returned towards the Sangam; but ultim-

ately, taking a turn near the Tahsil, it proceed on the main road, towards its camp near the Bandh.

"After dashing into the encampment of an Akhara adjoining the Bara Panchaiti, the elephant proceeded on the Ganga Patti where it damaged some huts.

"Captain N. was in charge of another Akhara, when the elephant went mad. He quietly escorted his procession to its camp. Then, taking two other elephants with him, he issued forth to control the wild beast.

"As soon as the mad elephant saw the other two, it stopped suddenly. Quickly it was wedged in between them, and then strongly secured.

"It was fortunate that the mad elephant was not seiged by the impulse to attack people, otherwise a great calamity would have resulted. During the disturbance caused by it, terrified crowds rushed about. But though some were crushed, none were killed."

XIII

SUICIDE

The classical world regarded suicide as an act of bravery; and indeed it requires no small courage

to take one's own life. In modern times, however self-immolation is condemned by all laws, save perhaps those of Japan, where harikiri is applauded.

Nevertheless no law provides a punishment for suicide. This sounds startling at first; but it could not be otherwise. Any attempt at suicide is punishable; but the offence is expunged no sooner the man dies.

Before the reform of the English laws in the early part of the nineteenth century, an attempt at suicide was punished with death. So any one who started the operation was well-advised to complete it. The Indian law is more sensible. The maximum sentence for an attempt at suicide is one year's simple imprisonment.



I was sitting in my office when I heard something like a snap. A few seconds later my orderly informed me that the head constable of my guard wished to speak to me. I went out and found one of the constables had shot himself through the throat. Subsequent enquiry showed that while posted to a tahsil, this man had fallen in love with the daughter of a superior officer; and had had to be transferd from there. This had

preyed on his mind; and when he heard of the girl's marriage he decided to take his life. He left an incoherent letter ; from which his intention could be vaguely guessed.

Once when I sentenced a Seth for an unnatural offence, he tried to swallow a diamond ring, under the impression that this would cause instant death. Medical opinion does not bear out this theory ; and so it is doubtful whether the man attempted suicide within the meaning of the law. In any case no action was taken against him. This story will be told elsewhere in greater detail.

The commonest form of suicide is that in which a woman jumps into a well. The reason is invariably ill-treatment by her husband or by his relations. This is a sad commentary on home life among the lower order.

The matter becomes more serious if the woman, when taking the plunge, keeps her infant in her arms. For while she takes her own life, she also destroys her child.

That is she commits both suicide and murder.

‘Technical murder’, I have heard it called. I found such cases very frequent in Azamgarh.

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Shortly before I joined a certain district there was a case of Sati then. Several people were prosecuted for abetting suicide; but were all acquitted by the Judge, a Hindu gentleman.

I met one of the accused later. He said that he momentarily turned his back to the funeral pyre, and when he looked round the widow was burning on it. I never saw the judgment in the case.

XIV

THE UNMARRIED MOTHER

The saddest of all cases are those in which a mother destroys her illegitimate offspring. This is the natural consequence of the social system, which heaps undying shame on the mother of an illegitimate child, and an unjust stigma on the child itself. The denial of remarriage to a Hindu widow is especially responsible for such cases. Soviet Russia is the only country I know of which has had the courage to re-educate society against this hard rule.

In some hill districts, I found a practice of watching a woman who was known to have gone wrong. This is to be deprecated. I have seen a ruling that the secret disposal of a foetus four months old is not an offence under sec. 318 I. P. C. (concealment of birth and disposal of the dead body). The law does not require a woman to proclaim her unchastity.

I once dealt with a city where cases of abortion were not uncommon among a certain class of rich citizens. On such occasions, a stream of gold would flow into the pockets of the police. Personally I would not cavil at this, so long as it was discreetly done. It saves the woman and her family from dishonour; and also punishes her and her accomplices. 'Left-handed justice', I have heard this called.

The blunt truth is that no attempt should be made to ferret out such cases. When prominently brought to notice, they must be investigated; though this need not be done with the same rigour as in the case of other offences. Our virtue should not be allowed to overwhelm our humanity.

XV

SOME PATHETIC CASES

Very early in my service I had the case of a young widow, little more than a girl, who destroyed her new-born baby by forcing a leaf down its throat. This was deliberate murder; and under sec. 302 I.P.C. the punishment had to be either death or transportation for life. The Judge unwillingly awarded the latter sentence; but Government, as an act of clemency, reduced the term to six months.

Much more recently another case came to my notice. A married woman, living away from her husband and with her parents, found herself in the family way. Several months were allowed to pass. Then a miscarriage was caused; and the body was thrown over a wall. Some one reported this to the police, who prosecuted the woman.

A foolish attempt was made by the defence to show that the family had not known of the pregnancy. Strangely enough, however the medical evidence on this point was not conclusive. The humane magistrate acquitted the woman,

giving her the benefit of the doubt. I was asked to direct further enquiry, but declined to do so.

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I had to deal with another sad case, this time in Garhwal. A young woman had come to be in the family way by reason of an illicit intimacy. As often happens in the hills, the villagers watched her. One day, while she was on the banks of a river, she was delivered of a still-born child. She left it hidden amidst the rocks. The padhan or village headman found it; and the unfortunate woman was prosecuted under sec. 318 I.P.C. for having concealed its birth, and secretly disposed of its dead body.

Her shame and the death of her infant should have been sufficient punishment; and I would fain have discharged her. But the law had to be obeyed, and I awarded her a month's imprisonment. I saw her in the jail after that. She spent her days weeping, for her life had been ruined. And she contemplated suicide after her release.

PART II

ASSAULT AND BATTERY

I

ASSAULT AND BATTERY

The definition of 'Force' in 349 I.P.C. is almost amusing in its scientific precision. Force becomes Criminal Force if used to commit an offence, or to cause injury, fear or annoyance (sec. 350 I. P. C.) 'Injury' is further defined in sec. 44 I.P.C. as any harm whatever, illegally caused to any person in mind, body, reputation or property.

'Assault', as defined in sec. 351 I.P.C. is any gesture or preparation to use criminal force. The expression 'attempted assault' (often used colloquially) is therefore meaningless in law. For an assault is really nothing more than an attempt to use criminal force. Mere words cannot be an assault (explanation to sec. 351). But any one who raises his hand at another assaults him.

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"Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt."

(sec. 319 I.P.C.) The following kinds of hurt are designated grievous (sec. 320 I.P.C.) :—

1. Emasculation.
2. Permanent privation of the sight of either eye.
3. Permanent privation of the hearing of either ear.
4. Privation of any member or joint.
5. Destruction or permanent impairing of the power of any member or joint.
6. Permanent disfiguration of the head or face.
7. Fracture or dislocation of a bone or tooth.
8. Any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

The difference between simple and grievous hurt is often merely technical. I have sometimes seen a man covered with injuries from head to foot, but his assailant could be charged only with causing simple hurt. On the other hand, the mere dislocation of a joint of the little finger is grievous hurt; and any one who inflicts it must, if convicted, be punished with imprisonment, if even for a day.

The vast majority of cases of grievous

hurt which come to court are fractures of bones. Nose-cutting is of frequent occurrence in some Oudh districts. It is seldom that simple hurt becomes grievous merely by reason of the long time it takes to heal.

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The law (secs. 324 and 326 I.P.C.) provides special penalties for those who cause hurt by means of

- (a) any instrument.
 - (i) for shooting stabbing or cutting.
 - (ii) which is likely to cause death.
- (b) fire or heated substance.
- (c) corrosive or explosive substance.
- (d) poison or any substance deleterious to the human body to inhale, to swallow or to receive into the blood.
- (e) an animal.

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The Indian Penal Code provides enhanced punishments for assault and hurt to a public servant.

- (a) In the discharge of his duties.
- (b) To deter him from his duties.
- (c) In consequence of anything done in discharge of his duties.

On the other hand, a more lenient punishment is provided if the assault or hurt is

(a) committed on grave or sudden provocation, or

(b) caused by mere negligence.

The following table will show the sections of the Indian Penal Code which deal with these various categories of offences :—

	Criminal force and Assault Hurt Grievous Murder			
Ordinary	352	323	325	302
By dangerous means	324	326	...
On public servants	353	332	333	...
On provocation	358	334	335	304
By negligence	...	337	338	304A

There are several sections dealing with assault and hurt caused for special purposes or under particular circumstances. I need refer only to two.

Poisoning a person or administering him some stupefying drug so as to facilitate theft or any other offence is punishable under sec. 328 I.P.C. with imprisonment up to ten years.

Sec. 350 I.P.C. covers the case of police officers who attempt torture to secure information or a confession or to secure surrender of property.

II •

SHOE-BEATING AND SIMILAR OFFENCES

An assault (sec. 352 I.P.C.) is one of the simplest offence in the Code ; but there are special kinds which are more seriously regarded. For example, there is assault on a public servant in discharge of his duty (sec. 353). There is also an assault on a woman to outrage her modesty (sec. 334).

Section 355 I.P.C. deals with assaults intended to dishonour anyone. To pull or twist the beard of a Muslim would be such an offence. I remember one instance in which a Hindu chaukidar of somewhat superior caste was knocked down ; and a sweeper then made to spit on him. I thought this a bad case ; and gave a stiff punishment awarding both imprisonment and fine, with compensation to the chaukidar.

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Shoe-beating would also come under sec. 355 I.P.C. for which the maximum punishment is two years. But usually nobody thinks of this ; and the charge is brought under sec. 323 I.P.C. (causing simple hurt), for which the maximum is one year only. The very first case in which

I convicted the accused (and the second I tried) was one of shoe-beating. I could try it as it was brought under sec. 323. I could not have tried it if sec. 355 had been invoked; for only a magistrate of the second class can deal with that.

It was not a case which should have been sent to so junior an officer. The accused was a Khan Bahadur, who had retired from responsible post. He had given his motor-car for repair to an Indian Christian mechanic; but thought he had actually damaged it. He took the man into his house, and got his servants to give him a shoe-beating.

When I reached court, I found he was being defended by no less a counsel than Mr. (later Sir) Charles Ross Alston. The case depended on little more than the complainant's statement; but I convicted the accused and find him fifty rupees and his servants five rupees each. On appeal they were all acquitted by the District Magistrate; and perhaps he was right. For though the case appeared to be true, evidence was scanty.

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The very first case I tried was also that of an assault. A woman was said to have been slapped on the cheek. After recording much evidence, I discovered the medical report. It showed the

mark on the cheek was due to the application of some chemical. I was puzzled when the counsel for the defence argued that it might be due to medicine applied to treat the injury. Nevertheless, I wrote a lengthy judgment, but discharged the accused.

Four years later I saw my brother try his first case. The thought which came to my mind was 'Did I look such a fool, when I tried my first case?'

III

NOSE-CUTTING AND SIMILAR OFFENCES

Cases of grievous hurt are cognizable offences ; but in practice are not investigated by the police unless committed in the course of a riot. Against this policy I have nothing to say so far as cases under sec. 325 I.P.C. are concerned. But when it comes under sec. 326 I.P.C. the complaint should always be investigated.

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I am thinking in particular of cases of nose-cutting which I found especially common in Sitapur and Gonda. This is usually done with a knife ; but I remember a case where a jealous

husband bit off his wife's nose. I have known some badmashes to cut off the nose of a zealous chaukidar; but in almost every other case the victim was a woman.

The disfigurement thus caused is so ghastly that the most exemplary punishments are called for. Most women would prefer death to being reduced to such a state of hideousness. Yet sometimes I have known such offences passed by lightly; and no compensation awarded to the victim. I would always award compensation under sec. 545 cr. P. C. in such cases; and I feel that little short of a sentence of death is the correct penalty.

I remember the case of a village chaukidar who was tenant of a zarbardast taluqdar. The latter wished him to affix his thumb impression to a paper; but the chaukidar declined to do so. The taluqdar decided to teach him a lesson. Calling for a gandasa, he chopped off the first digit of the chaukidar's left thumb. "In future you shall never put your thumb impression to anything." This, of course, was done indoors; and nothing could be proved.

IV

A CASE OF BRANDING

In low class Hindu families it is unhappily usual to try and break a young wife's spirit. This is what leads to so many suicides. The case I am to describe is an extreme one. It occurred in 1916.

A young girl was married to a half-witted youth. His mother and elder sister-in-law made her life a burden. She did the cooking and all the menial work. One day they were late for their meals ; and the girl (she was very young) unable to resist temptation, ate her share before their return.

This infuriated the two 'in-laws,' who determined to inflict an exemplary punishment on her. They tied her to a bed ; and heating a pair of tongs, they branded her on her breast and the private parts. This done, they kept her in close confinement.

After two or three days she escaped to her brother's village. Her brother took her to the thana, where she related her story. A medical examination confirmed it.

The police investigated the case ; but ultim-

ately reported that, in the absence of eye-witnesses, no prosecution was possible. I was however horrified at the story ; and myself called up the mother-in-law. (I did not take the precaution laid down in para 191 Cr. C. P. ; but no one raised the point.)

I accepted the girl's story. It was corroborated by the medical evidence and by her own report to the police (which I accepted in view of sec. 157 of the Evidence Act.) There was also some evidence of earlier ill-treatment.

I gave the two women the highest punishment I could award—two years rigorous imprisonment with three months in solitary confinement. I am glad to say the Judge upheld my orders.

V

THE VITRIOL BOTTLE.

A certain thakur zamindar was the terror of his neighbourhood. His brother and his son were almost equally feared. They were reckoned desperate and dangerous characters ; and all had history sheets as such. More than once they

were prosecuted for various offences ; but as often they were discharged, for no one dared to speak against them. On the last occasion they were sent up for murder ; but as usual they were acquitted. Their enemies now determined to take the law into their own hands.

A few weeks later the zamindar, who had been away on a visit, was returning home on a bullock cart. When some miles from home, he and his attendants were waylaid by several men. It was late in the evening, and they were not properly recognised. The zamindar tried to defend himself, but his assailants threw sulphuric acid on his face. This deprived him of his eyesight ; and his face was reduced to a shapeless mass. He was taken to hospital, where he lingered a few days before he died.

We had our suspicions, as to who had done this deed ; but evidence could not be found. The man might have deserved death because of his misdeeds ; but the dreadful mutilation, caused many to sympathise with him. This is the only example in my experience (nor have I heard of any other in India) where the French method of the vitriol bottle was imitated.

VI

POISONING.

Poisoning comes within the definition of hurt under sec. 319 I. P. C. inasmuch as it causes 'bodily pain, disease or infirmity.' It is punishable under either Sec. 324 or Sec. 326 according as the hurt is simple or grievous. Section 328 I. P. C. is a special provision of law. It covers poisoning even if no discomfort result. It is meant for cases where the drug is administered to facilitate the commission of an offence.

Poisoning is indulged in chiefly by criminal mendicants. People are often warned against accepting food or drink or smoke from strangers at railway stations and on the wayside. The poison most commonly used is *dhatura* or 'thorn apple.' In days of old it was used by thugs to stupefy their victims before strangling them. It is still used to facilitate theft from a victim. A symptom of such poisoning is that in his stupor the victim talks incoherently and picks up imaginary articles.

I have had few cases of poisoning in my experience. I can remember only one; and that indistinctly. A female visitor to a village represent-

ed herself as related to a family there. After being hospitably entertained, she offered some dainty she had brought along, to the man of the house and his wife. This soon stupefied them, and they exhibited the usual symptoms of dhatura poisoning. When they were in complete stupor, the stranger helped herself to some of their valuables and disappeared. The poisoned man and woman recovered. This is all I remember of the case.

VII

A GANG OF POISONERS.

A great cattle fair is held at Shikohabad. People from great distances come there. On the occasion to which we refer a gang of poisoners also came. On the train or at the railway station they marked down their victims.

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A party of five men came from Cawnpore district. They had a good deal of money between them ; and spent some on purchase of cattle. In

the fair they met a stranger, who informed them that he was employed by the proprietor to look to the welfare of visitors.

That evening the party was seated together, when the stranger re-appeared. He took a count and said he had to supply half a seer of flour to each of them, that is $2\frac{1}{2}$ seers in all. He bade one of them accompany him to get this quota. Tota, the oldest, did so ; but after a little way, the stranger said it was too great a distance for an old man like him to walk, and that he would bring the flour himself

He returned with the promised $2\frac{1}{2}$ seers, which one of the party proceeded to cook. The stranger sat and watched, smoking a chilm. He was solicitous of their needs. He enquired if they wanted salt and spices to flavour the chapattis ; and said he could also bring vegetables. But the men declined to trench further on his hospitality.

It was getting dark, and an employee of the mela came and hung a gas lamp on a tree. The party called to him to bring it nearer ; but he took no heed of them. The stranger said he would go and see to this ; and went off seemingly for this purpose.

The five men from Cawnpore now partook of their meal ; and within half an hour they were un-

conscious. Some employees of the Fair found them lying thus.

They were taken to the doctor, who happened to be on the grounds ; and he managed to bring them round. But while unconscious, they had been relieved of over four hundred rupees.

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Khammu banjara came from Hardoi district, bringing with him his little son Hasnu. At the bridge over the canal he left his son for a little while ; and when he got back he found a stranger offering him jelabis to eat. Hasnu had refused ; but the stranger said this was *prasad* or a religious gift, and insisted in handing two each to the father and the son.

Apparently to assure them, he gave a few also to two or three people standing nearby. These were probably accomplices and were not given poisoned jelabis ; for they suffered no ill-effects thereafter.

Khamnu and Hasnu now proceeded to the fair. When near it the latter complained of a burning sensation in his stomach and swooned off. Khamnu picked him up and carried him ; but presently felt similar symptoms himself. He managed however to stagger to a relation to whom

he handed the Rs. 1190/- he had. Then he too lost consciousness. Fortunately the doctor was still handy ; and both father and son were saved.

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There was no evidence of any of the victims exhibiting the symptoms of picking at things. But their faces were flushed and the pupils of their eyes were very dilated. When they had reached the doctor, four were completely unconscious, and three only semi-conscious. The doctor suspected dhatura poisoning.

A report was now lodged at the police-station. The victim gave a good description of the poisoner—a swarthy man with dark moustaches, of short but stout build, and slightly lame of one foot. He was aged about forty, and spoke the dialect of the locality. He had said he belonged to the district; but on that statement there could be no reliance.

Investigation in this case is still not complete. In spite of a vigorous search the culprit has not been found. This is one of the rare instances when sec. 512(2) Cr. P. C. could be useful, that is recording evidence in absentio, even though the offender is unknown. Poisoners are always professionals ; and often tour many provinces. The Criminal Investigation Department might be able to give a clue as to this man's identity.

VIII

WHEN PUBLIC SERVANTS ARE NOT PROTECTED

It happened about 1915. A Station Officer of police had reason to believe that stolen property was concealed in a house a little way beyond the limits of his jurisdiction. He proceeded there at once. The occupant of the house resisted his entry, though in a feeble manner. He was promptly arrested and later prosecuted under sec. 353 I. P. C. (assault on a public servant in the execution of his duty). I convicted and sentenced him; and the Judge upheld my order.

A revision was lodged in the High Court, and the man was acquitted. The house was situated beyond the jurisdiction of the searching officer; and he should, before searching it, have secured the concurrence of the station officer within whose jurisdiction it lay. (sec. 166 I. P. C.) The court remarked that police officers could not claim the special protection of the law unless they meticulously observed the provisions of the law.

The man could, of course, have been convicted under sec. 352 I. P. C. But equally well could the searching officer have been prosecuted for house trespass under sec. 448 I. P. C.

I had a somewhat similar case the following year.

In 1924 however certain additions were made to sec. 166 Cr. P. C. A sub-inspector may now, without reference to any other, search a place outside his jurisdiction, if delay might lead to the concealment of property or the destruction of evidence.

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Cases often occur when officials, even if acting under orders of superior authority, cannot be afforded the special protection of the law. This oftenest happens in the course of revenue collection. Technically the only officials who may perform this duty are the Tahsildar, the Naib Tahsildar and Kurk Amin (of whom there are rarely more than two in any tahsil). But at the end of the season, the Tahsildar has perforce also to depute his clerks and his kanungos on this job.

If assaulted, these latter cannot plead they were acting as public servants; for the order of the Tahsildar does not create them such. It is immaterial whether the assailants are later convicted under the milder or the severer provisions of the law. What matters is that such officials place themselves (or rather are made to place

themselves) within the law by making demands and taking action which the law does not warrant them to make or take.

Similar awkward situations arise when our revenue staff, without any legislative backing, is forced to raise so-called voluntary loans and subscriptions. But we have had so many of these since the war began, that it is best not to dilate on the subject. The maxim which best applies in such cases is that discretion is the better part of valour.

IX

ON THE ROADSIDE

I was motoring from my headquarters at Banda to inspect the ferry across the Ganges some twenty miles away. When a long way out, a flock of goats, ran across the road and I killed one. I pulled up as quickly as I could ; and called to the boy who was attending them. Since he did not deign to respond, I went on.

I had quite forgotten the incident when returning. But my chaffeur (though I was driving)

remembered. He noticed the boy standing next to the road with an upraised lathi. His intention clearly was to strike the car; and if the blow had fallen on the wind-screen the consequences would have been serious.

My chaffeur shouted to the boy, which caused him to hesitate in carrying out his intention. I was travelling fast and had gone a good way, before I could pull up. I backed to the spot; and the boy showed a clean pair of heels. He ran into a pond; but my three servants also plunged in and got hold of him.

Meanwhile the people in the village two furlongs away, started for the rescue. We could see them running up with their lathis. Fortunately my sola topi warned them that I was an official; and they thought better of the matter. The boy's mother however clawed at us, and had to be thrust away. With much difficulty we got the boy in the car, and holding him there, we proceeded to the Kotwali.

There I lodged a report which was sent for investigation to the thana in which the incident had occurred. The police then registered a case under Sec. 353 I. P. C. and chalaned it. But in court the inherent weakness of the charge became apparent. Could I be said to have been on duty,

merely because I was on my way home from an inspection ?

Ultimately the court, quite rightly, said the case was at most one of simple assault (sec. 352 I. P. C.) Then the boy and his relations came to me ; and I raised no objection to the proceeding being dropped. I had merely meant to frighten them ; and that object had been achieved.

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I had a somewhat similar experience in Azamgarh district. While passing through a Muslim village a kid jumped right in front of my car and was run over. We pulled up as soon as possible. But a Muslim rushed up. "It is all right, Sahib," he said, "We managed to cut its throat before it died" !

(It will be remembered that Muslims may not eat the flesh of an animal, which has not been slaughtered in the orthodox manner.)

X

AN ATTEMPT TO MURDER

A station Officer of Police was celebrating the wedding of his daughter. For the occasion he

borrowed a shamiana (with kanats and other paraphernalia) from Pt. Jai Kishore, a wealthy zamindar and mahajan, resident within his circle.

A few days later something happened which exacerbated the feelings of the two. What this was never clearly came to light.

Jai Kishore declared that the shamiana had not been returned to him. He issued a registered notice to the sub-inspector; and receiving no reply, sued him in the civil courts. The case came up for hearing at district headquarters; and the sub-inspector denied the claim. After the hearing Jai Kishore stayed on in the Civil Courts, while the sub-inspector came on to the Collectorate.

It happened that one Hira Lal had also come to court that day. This man was in the bad books of the police, and neither he nor the sub-inspector bore any love towards each other. When they met in the Collectorate, the sub-inspector abused him; and Hira Lal struck him with, so the police said, an iron rod.

He was promptly arrested and placed before an eccentric magistrate whose promotion had long been barred. That gentleman proposed to record his confession; but it consisted of little more than the single sentence, "I struck the sub-inspector at the request of Jai Kishore."

By evening Jai Kishore had been arrested on a charge of abetting an attempt to murder. The Judge was immediately moved to sanction bail. He ordered Jai Kishore's release forthwith ; and also directed that the papers be put up before him next morning.

Next morning it transpired that the only injuries on the sub-inspector were a couple of contusions on his back and his arm. The attempt to magnify the matter into an attempt to murder, only betrayed the anxiety of the police to find an excuse to arrest Jai Kishore.

A long and contested trial followed. I refused to place any value on the so-called confession by Hira Lal. But I gave him a light punishment under sec. 323 I. P. C. remarking that the case came almost under sec. 334 I. P. C. Jai Kishore was acquitted.

This incident occurred in what I have often described as the worst-administered district I have known.

As a matter of fact, very few cases of attempt to murder come to court. The reason is that most of them also come under the category of simple or grievous hurt. When death does not

actually result, it is not easy to prove an intention to cause it. Moreover cases of hurt are triable by magistrates, while attempts to murder must go to the Court of Session.

XI

BA HANGAMA GRIFTARI

A police officer may use all necessary means to effect an arrest, but unless the offender is punishable with death or transportation for life, he may not cause his death. (sec. 46 Cr. P. C.). If, in the attempt to arrest, an offender not so punishable, is killed, the police officer, may not be charged with murder; but only with culpable homicide not amounting to murder (Exception 3 to sec. 300 I. P. C.). And the offence (sec. 304 I. P. C.) may be very lightly dealt with.

A collective fine was imposed on a village under Ordinance XX of 1942. When the kurkamin proceeded to the scene, his chaprasi was attacked, one of his bones being fractured. The Tahsildar sent a report to the police station concerned; and next day, proceeded to the spot him-

self, accompanied by all his peons and some other officials. This party not only realised the fine ; but also took their revenge for the incident of the preceding day. The villagers made a great noise about this ; and sent in many exaggerated complaints (of rape among other things). Some of them certainly bore injuries, but not of a serious nature.

I proceeded to the spot and made an enquiry ; but like most magisterial enquiries, the result was only confusion. In the meanwhile, the police were investigating the assault on the peon on the first day. The investigating officer, who certainly was very good at his work, confided to me as follows "Hazur, the Tahsildar Sahib made a great mistake. If he had asked the police to accompany him, we could always have said the villagers resisted and were injured at the time of arrest. (*Ba bangama griftari.*)

XII

POLICE TORTURE

Police torture in the real sense is now a thing of the past. The consequences are much too

serious. (secs. 330 & 343 I. P. C.) The allegations I have sometimes heard in the course of my service of thirty-three years always turned out to be highly exaggerated.

Nevertheless the urbane methods of the courts would render most investigations infructuous. Pressure is often needed. This oftenest takes the shape of danto-ing. The infinitive *dantina* has no exact equivalent in English. The nearest word is 'threatening'; but there is also an element of loudness about it. Coupled with abuse, it is often efficacious.

Slapping and beating may sometimes be resorted to; but it is a cardinal principle that no marks of injury must be left. In the vast majority of cases, no such marks will be found. If they are, the explanation is either that they occurred before the investigation or at the time of the arrest. (*Ba bangama griftari*).

A method still employed is known as murghanana. The hands are first tied behind the back; and then the two legs are drawn up behind and tied to the hands. This makes a man look like a trussed fowl. He is either placed in the sun or

has some sweet juice rubbed on his face. In this state of helplessness, he can neither move into the shade ; nor drive away the flies and other insects which torment him.

Another method I heard of long ago was to make a man sit naked on an inverted chelum. More recently I have been told of how pounded chilies were forced up a man's rectum - - certainly a painful operation, but one difficult to detect and too disgraceful for the victim to admit.

A more refined method, used in the winter, is to bathe him, or at least to make him stand in cold water all night. The most exquisite of all is to give him jelabis to eat; and then when he imagines himself in clover, to refuse him drink till he confesses.

But such methods are far less common than is popularly supposed. For the most part, police officers are hard put to muster up evidence; and slapping and danto-iug are the limits to which they go.

XIII

RAPE

Rape as defined in sec.375 I. P. C. has its dictionary significance and also something more. Sexual intercourse with a female below the age of twelve years is always rape, even if with her consent.

A man cannot be prosecuted for raping his wife if she be above twelve years of age. If she be below that age, intercourse with her is an offence. But sec. 561 of the Criminal Procedure Code wisely discourages prosecutions for rape by a husband. Only an Inspector of Police may investigate such a case; and then only under the orders of the District Magistrate. And only a District Magistrate may take cognizance of such an offence or commit it for trial.

The offence of rape is triable exclusively by the Court of Session. The penalty can be transportation for life or imprisonment up to ten years. Fine and whipping can be awarded in addition.

Uttering any word or making any gesture to outrage a woman's modesty, comes under sec.309 I. P. C. Actually to assault with such intention

comes under sec.354. Of the former I never remember a case. One sometimes has cases of the latter, but almost always false. At least I never had a true one before me. This tit-bit is usually added to gain the sympathy of the court and to make matters look more serious.

As for rape, the only genuine cases are those where young girls are violated. Otherwise matters never come to court, unless a third party arrives on the scene.

* * *

I remember a case in a Cantonment, which I committed to the Court of Session. The charge was only for attempt. The complainant was a young woman. The accused was convicted. But military opinion did not agree with the punishment awarded. "He should have got twenty stripes for the attempt", they said, "and ten years for not completing the act !"

XIV

UNNATURAL OFFENCES

In the case of unnatural offences, the passive agent is almost always a boy, and as often as

not, he is a consenting party. Consent does not of course condone the offence; but it does make it most difficult to prove.

* * *

I tried one notable case of this kind. The accused was a rich Seth. The boy's statement, and his examination by the local Assistant Surgeon, together with some corroborative evidence, left little doubt as to the truth. The defence decided to counter this by examining a British Colonel of the Indian Medical Service, who, so ran the petition, 'was an expert in such matters.'

That worthy deposed that the evidence did not and could not establish the charge. I gave him two pages of my small handwriting when I wrote my judgment ; and convicted the accused. The appeal was argued by such eminent counsel as Boys and Ross Alston ; but my view found favour with the Sessions Judge. A revision to the High Court was not preferred, for fear the sentence might be enhanced.

I shall relate elsewhere an attempt at suicide by the unfortunate Seth ; and his death a few days after his release from prison.

I had one shocking case under Sec.377 I. P. C. The accused were two young butcher

boys. I would dearly have loved to have had them whipped in addition to imprisoning them. But the law permits corporal punishment in such cases only when the passive agent has been intimidated into submission. This could not have been so here, for the victim was a baby girl not quite two years old

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I have had to deal with only one case where the passive agent was an animal. The accused, suffering from a certain complaint, was assured of a cure if he had connection with an animal. This he tried with a heifer one night. But the owner heard the animal struggle ; and the accused was caught in the very act. The villagers handed him up to the police, for they "could not tolerate such gao-hathia."

PART III

INCIDENTS IN COURT

I

A FIASCO

One of the most unnerving experiences I have had was when I pronounced sentence on a certain Seth for an unnatural offence. It had been rumoured that he intended to commit suicide if he was convicted. As I delivered judgment, I saw him raise his hand and thought he was about to place it on his forehead in token of resignation at his fate.

But it never went higher than his mouth. My court constable jerked it away, crying out that the man has swallowed something. He would not allow the Seth to close his mouth ; and for a few minutes there was bedlam in the court room. Presently the doctor came from the hospital next door ; and applied a stomach pump to the unfortunate man.

What had actually happened was this. The Seth had the common though erroneous belief that a diamond is a deadly poison. He was wearing a diamond ring ; and it was this he had intended to swallow, when his hand was jerked aside. A few minutes later it was found lying on the floor where he had been standing.

The feeling among the other Seths (there were many in the town) was one of sympathy with the accused. In jail the unfortunate man pined away, overcome by shame at his disgrace. He died two or three days after his release. By a strange coincidence I was under orders of transfer from the district at the time; and left it within a week of his death.

II

AN HOMICIDAL MANIAC

Let me speak of the most dangerous man I have met, a veritable homicidal maniac. He was a bania from Bareilly. His father had to seek the protection of the law ; and the man was bound over under sec.107 Cr. P. C. No one being willing to offer security for him, he was sent into custody.

I met him in a jail in Oudh, where, merely to gain notoriety with other prisoners, he nearly brained the Superintendent of the jail with an iron pan.

He was prosecuted before me. As I pronounced sentence, he flung at me a small thin piece of steel which he had secreted in a kerchief tied round h's head. He had sharpened it ; and his intention probably had been to cut my nose with it ; but he had found himself too far from me for the purpose. He was promptly put up before another magistrate ; and there showed every sign of leaping over the railing to brain that officer with his handcuffs.

So dangerous was he that his hands were cuffed behind his back. I can picture him standing like this, and glaring all round like a wild animal.

Being unable to manage him in a District jail, it was arranged to transfer him to a Central Jail. With him was despatched a condemned prisoner.

Unfortunately the maniac was on this occasion, handcuffed in the ordinary manner. As he alighted from the railway carriage he threw his manacled hands round the condemned prisoner who was in front of him ; and before the police realised what he was after, he had bitten off his nose.

Some years later I was posted to Bareilly and wondered if I would meet him. But he had been shot dead while leading a mutiny in a Central Jail.

III

A MURDEROUS ATTACK

My brother, who is also a magistrate was posted to Ranikhet. He was severely assaulted by a fanatical Mohammadan while sitting in court on 4th April 1940. The assault however had nothing to do with the case he was then hearing. It was in revenge for an order he had given in another matter some weeks previously. The following account appeared in a newspaper.

“The incident took place when Captain N was engrossed in a case, sitting as Civil Judge. He heard a rush over the boards of the dais just behind his chair. At first he thought it was an over-polite orderly, running to fetch a chair for some visitor of importance ; and paid no attention.

“The next moment an arm completely encircled his head, covered his eyes, and tried to force his head back. ... Even then it did not occur to him

that a desperate attempt was being made on his life. The pressure to draw his head back made him resist automatically, however, and he dipped his chin. At the same moment the blade of a butchers knife was drawn, bone-deep, across his face from cheek to cheek, severing completely the septum of his nose.

"It was in that moment of agony and horror that he realised he was fighting for his life. The pressure to pull his head back increased, and his resistance doubled. Under his glasses he saw a knife flash back again, this time low down across his face. He now realised that it was his throat that the assassin was aiming at; and he rigidly held his head down to protect it.

"The next moment he felt the point of the knife on his chin, and had it been one-sixth of an inch lower his would-be murderer would have accomplished his sinister design. The knife caught the Captain Sahaib's lower lip, almost severing it from the jaw.

"Simultaneously with this, he managed to rise from his chair; and with all his strength he hurled his assailant against the wall of the court room, twelve feet away. From there the man glared at his victim for a moment, dagger in hand; and

then, as the lawyers jumped over the railings to assist Captain N, he fled straight out.

“People came from everywhere and gave chase. Fortunately the man dropped his knife after about a hundred yards ; and those coming from the opposite side stopped him and overpowered him. When the crowd saw what he had done they attempted to mob him, crying out ‘Beat him to death and gouge out his eyes.’ With what little articulation he had left, Captain N. appealed to the mob not to hurt him in any way, otherwise the man would have been murdered on the spot.

“Captain N was taken to the British Military Hospital where he was put under chloroform, awaking in agony three hours later.”

PART .IV

ABDUCTION AND SEDUCTION

I

KIDNAPPING AND ABDUCTION

The word kidnap was in its origin a combination of two slang terms, kid (child) and nab (steal). So intially the word meant 'stealing a child'; but in modern days it has acquired a wider significance.

In law (sec. 359 I. P. C.) kidnapping may be of two kinds—kidnapping from British India, and kidnapping from lawful guardianship. All kinds of people may be kidnapped from British India ; but only the following may be kidnapped from lawful guardianship.

- a. those of unsound mind
- b. boys below the age of fourteen
- c. girls below the age of sixteen.

If kidnapping be effected by violence or deceit,

it becomes abduction (sec. 362); but persons of all ages and conditions may be abducted.

The penal sections for kidnapping and abduction are from secs. 363 to 369 I. P. C.

The last six of these seven sections deal with cases where the motive is to murder, hurt, confine, or an immoral purpose. Section 366 deals with kidnapping and abduction of a woman to force her into marriage. Section 369, with kidnapping or abducting a child below the age of ten for the purpose of stealing from its person.

Section 363 applies to cases where none of these motives are at work. But for some reason it refers only to kidnapping, and not to abduction. Let us examine the consequence of this omission. It is an offence to kidnap or abduct a child or a lunatic, under all circumstances. It is also an offence to kidnap a person of any age from British India. But a sane adult cannot, within the meaning of the law, be kidnapped by removal within British India. Nor is it an offence to abduct him within those limits, unless it be for any of the purposes enumerated in sections 364 to 369 I. P. C.

II

PROFESSIONAL KIDNAPPING

Some twenty years ago there was a considerable export of women from the western districts of the United Provinces, especially from Garhwal. They were taken mostly to the Punjab and sometimes to Rajputana. It was said there was a scarcity of marriageable women there.

I had such a case before me in Aligarh in 1919 or 1920. There were several accused—among them a woman and a police constable. I remember few details. The abducted female was stopped before she was taken far; and she gave the police her story. The case ended in conviction.

There is a woman in every party of kidnappers. Without her, approach to the lady in question would be difficult, if not impossible. At some police stations, I still see women under surveillance as professional kidnappers. But it is long since I had a professional case before me.

Those who make a business of kidnapping and abduction certainly deserve no mercy. But I am bound to say that in some of the cases I have had before me, the abducted woman, especially if a widow, was happier where she was

taken, than where she had been. It was a pity she was ever traced.

In most cases of abduction the victim is a woman of marriageable age ; and I shall later describe an interesting case of this sort.

Children are usually kidnapped for their ornaments. But I came across one strange case of wholesale kidnapping of children by a tribe of gypsies. This will be described under the caption of 'The Singhiwalas'.

I can remember only one case of abduction with intent to murder. (sec. 364 I. P. C.) The victim was a dacoit, who had confessed ; the culprits, his companions whom he had let down. It was very long ago, however, and all I now remember distinctly is that the dead body was never recovered, and that the principal accused was a notorious absconder, Balwanta aheria by name. He was convicted by the Sessions Judge.

III

A CASE OF ABDUCTION

Mt. Mati Bibi was left a widow at the age of nineteen. She went to live with Noor Mohammad, brother of her deceased husband. According to Nur Mohammad he married her ; according to her she did not. However this might have been, after four or five years she left him ; according to her, he turned her out. Sadiq Khan, another resident of the village, gave her shelter, and eventually married her. Nur Mohammad charged him under sec. 498 I. P. C. for seduction ; but lost the case.

He then determined to gain possession of the lady by unorthodox means. A difficulty was that Sadiq Khan and he both resided in the village of Machti, in Kaimpur Police Station. It was not possible to take her to his own house ; so it was decided to keep her elsewhere till she could be removed to Assam, where Nur Mohammad had considerable interest in tea.

Nur Mohammad got in touch with one Jagan ahir, resident of the neighbourhood ; and through him secured the services of his brother-in-law, Janki ahir. Janki lived in Puranpur, a village

some eight or ten miles from Machti and lying in Mohana Police Circle.

Six weeks after the dismissal of the case under sec. 498 I. P. C. Nur Mohammad put his plans into action. It was in the small hours of the morning of the 21st December. Nur Mohammad accompanied by Janki, Jagan and about a dozen others broke into Sadiq Khan's house and forcibly removed Mt. Mati Bibi. Sadiq Khan was laid low by a lathi blow ; and two villagers who tried to intervene suffered a like fate. Two others arrived only in time to see Mt. Mati Bibi being led away. The party walked two miles to where an ekka awaited them. On it the lady, escorted by Janki, was taken Puranpur, and lodged in Janki's house.

That same afternoon Sadiq Khan lodged a report at the Kaimpur thana a few miles from his village. The following day he and the two injured witnesses were medically examined. In his report Sadiq Khan mentioned only the name of Nur Mohemmad and of his father (who died before the case was concluded). The police started investigation and learnt the names of two or three others from the two injured villagers. That Nur Mohammad was concerned in the matter no one

could doubt ; and happy chain of circumstances led to the discovery of the abducted waman.

Janki ahir enjoyed the distinction of police surveillance. Lalji, the village Chaukidar, had found him absent from house that night ; and had reported the fact at Mohana thana at 8. A. M. that morning (the 21st). The following day (the 22nd) the chaukidar reported his return. But immediately after Janki went off to a military station to fabricate an alibi. His wife also disappeared. On the morning of the 23rd the Chaukidar noticed a strange woman at Janki's house. He and another villager questionad her. It was Mt. Mati Bibi, who gave them her story. They took her to Mohana thana, where she lodged a report.

There could be no possible collusion between those who had given reports at Kaimpur thana and those who had done so at Mohana, places about ten miles apart. There could be no doubting the evidences of Sadiq Khan and Mt. Mate Bibi ; nor of the two witnesses who were injured. The police prosecuted seven men, of whom one died during the course of the proceeding ; and, somewhat too suspicious, I acquitted four. Nur Muhammad and Janki were however convicted and

sentenced for riot (sec. 147), house trespass (sec. 451) and abduction (sec. 365).

Each was awarded two years imprisonment. In appeal the order was upheld; and the High Court too dismissed an application for revision.

IV

THE SINGIWALAS

An amazing case of wholesale kidnapping came to light in 1920 when I was sub-divisional magistrate of Hathras. On a canal bank some three miles from that town is the hamlet of Lehra. It was populated exclusively by a tribe of gypsies known as Singiwalas. They used to go far afield selling herbs and medicines; but always returned to Lehra.

One day S. I. Aziz-ul-Qadr, Second officer of Hathras, visited the village, and was, accosted by a Singiwala named Bansi. He had had a quarrel with some of his neighbours, and had determined to get them into trouble. He told the sub-inspector an incredible tale of how the tribe practised

infanticide with their own daughters, and then kidnappe 1 little girls to marry to their sons.

S. I. Aziz-ul-Qadr reported the matter to the Station Officer Th. Baldeo Singh ; and together they proceeded to the hamlet. There, at Bansi's indication, they found no less than twenty-three little kidnapped girls. Bansi was able to say from where they had come, and how they had been enticed away while at play. Enquiries from native states and outlying districts bore out the truth of the informtion.

In a few cases the little girls, none of whom were over ten or twelve years of age, could remember their original homes. Most of them had grown attached to their adoptive parents, who, though they lived in squalor, had treated the little girls kindly. Memories were awakened when the real parents arrived, mostly low-caste people. It was a touching sight to see the reunion.

We tried to prove infanticide ; but only one grave was found with the bones of an infant. Nevertheless, it was a fact the village chaukidar had reported no births at all from the hamlet ; and excluding the kidnapped girls, all the children were boys. The adult females too appeared to

have come from other places ; but had been too long away to remember their early lives.

Cases of kidnapping and of concealing kidnapped children were run against a large number of these Singiwalas. Stiff sentences were imposed on them ; and thereafter all were registered under the Criminal Tribes Act. This, it is to be hoped put an end to their depredations. These cases were especially mentioned in the Annual Provincial Police Administration Report for 1920.

V

RESTRAINT AND CONFINEMENT

Wrongful restraint is the antithesis to kidnapping and abduction ; wrongful confinement, often the sequel. The definitions appear in sections 339 and 340 I. P. C.

The maximum punishment for the former is only one month's simple imprisonment (sec. 341 I. P. C.)

Wrongful confinement is a more serious offence. The penal clauses are from secs. 342 to 343.

Wrongful restraint and wrongful confinement are, under the law, both cognizable offences. But under executive orders, the former is never investigated; and the latter, only if the police find the man in actual confinement.

Sec. 347 deals with confining a person to extort from him or to compel him to do an illegal act.

Sec. 348 I. P. C. covers the case of police officers who illegally confine anyone to compel him to give information or to confess or to surrender property.

In most cases of wrongful confinement, the detention is technical and very temporary. I can remember only one, in which a man was locked up for over a day. But that was very long ago, and I forget details.

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Under sec. 100 Cr. P. C. certain magistrates may issue warrants for search and production of persons illegally confined.

The person must forthwith be produced before the magistrate, who may then pass such orders as are desirable.

Applications for such warrants are usually made for runaway women. The section is less used than misused. I shall speak farther on the subject in a later chapter.

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VI

RESTITUTION OF CONJUGAL RIGHTS

A husband or a wife may sue in the Civil Courts for restitution of conjugal rights. But it is no longer permissible to execute such a decree by arrest of the defendant. All that can be done is to attach his or her property ; and after three months, it can be sold. Out of the proceeds the court may give a portion as compensation to the plaintiff, the rest being returnable to the defendant.

As can be imagined such a decree is as good as useless unless the defendant holds any property, which is not often the case with women. And even if she has property, all she needs to do is to return to her husband for a few days, thereby obeying the decree ; and then run away again. Indeed, even before a decree is passed, if a woman returns to her husband, however temporarily, that particular suit must be filed on the ground that the claim has been satisfied.

This is certainly very ineffectual procedure ; but unless we look on a woman as a mere animal to be bought and sold, it is the most sensible law then could be.

“ VII

SEDUCTION

When a woman knows what she is about, and only seduction, as distinguished from deceit, is practised on her, it cannot be said she has been abducted. If she is unmarried or a widow, no offence is committed by thus removing her. If she is married, sec. 498 I. P. C. applies ; but no court may take cognizance of such a charge, except on the complaint of the aggrieved husband. (sec.199 Cr. P. C.) Cases of this kind are very common.

The Indian Penal Code has two clauses dealing with such offences. They are Sec. 497 which deals with adultery ; and sec. 498 which penalises the seduction of a married woman and living with her for immoral purposes.

It is an inconsistency that though a woman may not be punished for adultery alone (sec.497), yet she can be prosecuted as an abettor under sec. 498 I. P. C. In practice, however, she is almost always cited as a mere witness. In fact, the purpose of such prosecutions invariably is to secure her return, or at least the return of any jewellery she might have taken away.

Sec. 498 I. P. C. is made up of two parts.

(a) seducing a married woman,

(b) living with a married woman.

There is a conflict of rulings regarding the latter part. Some hold that merely living with a married woman is an offence. Others that it is punishable only if the woman has been seduced. In other words the former interpretation would throw an unhappy or deserted woman on the streets, while the latter would at least enable her to secure shelter and a home. The law is in need of clarification ; and when that is done, it is to be hoped that humanity rather than virtue, will dictate the amendment.

VIII

MISUSE OF SECTION 498 I. P. C.

Our High Courts have some times expressed the view that the Criminal law is not meant, either to restrain a woman along the strait and narrow path of virtue, or to compel her unwilling return to her husband. Unfortunately, however,

there is a tendency with many courts to apply Sec.498 with narrowness and rigour. In fact many magistrates make themselves into cheap civil courts by issuing warrants of arrest, practically to secure a restitution of conjugal rights.

This tendency is especially apparent in hill districts, where a woman is regarded as little more than a valuable animal at the disposal, if married, of her husband, and, if unmarried, of her relations. This was particularly bad in the remote sub-division of Chamoli to which I was once posted. There such cases were instituted, not even to enforce morality, but to gain the support of the law for levying blackmail. Let me describe a few actual cases which came to my knowledge.

A widow of adult age eloped with a man. She had been living with her father and brothers; and they saw no reason why they should be deprived of her price. Being unable to invoke either section 497 or 498.I. P. C. they reported that she had been abducted. A warrant was issued for her arrest; and, thus frightened, she declared she had been forcibly taken away. But her consent was apparent; and the case failed. Nevertheless her paramour was too afraid to take her back;

and she was deprived of the home she had sought.

Even more pathetic was the case of a woman deserted by her husband. He had married again; and for twelve years she had to live on the bounty of her brothers. Being only human, she then contracted an intimacy with another man, and was found to be in the family way. Her husband now saw his chance; and claimed her price from her paramour. When he could not rise to it, he charged him with adultery under sec. 497. The reason why the easier section 498 I. P. C. was not invoked was that the woman had not been under her husband's protection for many years.

Till I reached this remote region, I had scarcely ever had a case of actual adultery under sec. 497 I. P. C. When they came up now, I demanded proof of the actual act. I had never before found this available. But now husbands, finding this to be my attitude, did not scruple to make their wives depose to the needful. I do not know what others think of this. To my mind, secret adultery is not nearly as bad as compelling one's wife thus to degrade herself.

When I reached Chamoli I found it a regular orderd cases under sec. 498 I. P. C. to

the police (there the patwari) for investigation. I put a stop to this forthwith; and cannot too strongly condemn the practice. These are definitely not matters in which the police should interfere.

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There was a pathetic case in an eastern district, though not in my court. A woman eloped with a man; and had several children by him. Her husband had either always been half-witted or became so after this episode. Repeatedly he tried to put the criminal law in motion to get her back; but as repeatedly failed. Once the court pointed out to him the folly of taking back a wife who had given so many children to another. I have never forgotten his reply. "If the field is mine", he said "the produce is also mine!"

IX

WARRANTS OF ARREST FOR WOMEN

Section 100 Cr. P. C. enables a magistrate of the first class to issue a warrant for search and production of a person illegally detained. This

is usually asked for in the case of women. My first experience of this was early in my service. I am not sure of details ; but shall try and relate what happened.

It was alleged that a young girl was being detained to be forcibly married. I issued a warrant under sec. 100. Two claimants arose for her ; and I could not decide who was best entitled to her custody. A professor of a local college offered to keep her till the matter was settled ; and I allowed him to take her away.

Late that evening I received an urgent letter from him stating the girl was about to run away and that he could not be responsible for her. I was in a quandary, for such matters over women lead to trouble. I forget what I did ; but I know that later, the question of her guardianship went to the District Judge.

I never forgot that incident ; and for nearly twenty years refused to issue warrants under sec. 100. Cr. P. C. I certainly sometimes asked the police to report on such applications ; but never went any farther. When I became a District Magistrate, I dealt similarly with applications under sec. 552 Cr. P. C.

I am strongly against issuing warrants of arrest in cases under sec. 498 I. P. C. The second schedule to the Code of Criminal Procedure Code certainly provides that ordinarily a warrant should, in the first instance issue for the accused. But this is not, by any means, obligatory (sec. 204 Cr.P.C.); and considering the offence is little more than a tort, a summons should always precede a warrant.

If the seduced woman is cited only as a witness, a summons should always issue in the first instance. Magistrates should not yield to arguments that the woman may abscond. It is not the business to enforce a restitution of conjugal rights. Section 90 Cr. P. C. does in exceptional cases permit the issue of a warrant of arrest instead of a summons ; but this is not the occasion to invoke it.

A certain honorary magistrate actually told me that he always issued warrants of arrest for seduced women, regarding whom a case under sec. 498 I.P.C. was lodged. His argument was that the woman on being thus frightened, always agreed to return to her husband ; and so the case was compounded. I strongly disagreed with him. Not only was the magistrate making himself a cheap civil court ; but he was shirking his duty to try a case,

by illegally forcing a compromise in this manner.

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In the next chapter I shall tell a story illustrating the unhappy consequences of forcing a woman to return to her husband.

X

A TRAGEDY

Mt. Mahadevi was married to Babu son of Kalka. They were not happy; and she eloped with one Moti who lived in another village. They were not heard of for months; and Babu took another wife unto himself.

Two years passed; and Moti thinking trouble must have subsided returned from exile. With him came Mt. Mahadevi, who was then in an advanced stage of pregnancy. They stopped for the time being, in the house of his brother Genda.

The news of their return spread quickly; but Babu took no action. His father Kalka, however, thought fit to charge Moti under sec. 498 I. P. C. apparently because Mt. Mahadvi had been under his custody, when she had eloped.

The Tahsildar, before whom the case was instituted, issued a warrant of arrest for both Moti and Mt. Mahadevi. In the meanwhile Mt. Mahadevi had given birth to a child ; and was still in bed when the police arrived.

Moti and his brother tried to persuade the constable that the woman was not in the house ; but he, accompanied by Kalka, entered to make sure. Moti followed ; and an insane notion entered his head. He picked up the ten day old infant, and dashing it to the ground, killed it

Moti hoped to prove that not he but Kalka had done this deed in his anger. This was the defence put up at the trial ; and Mt. Mahadevi supported the story. It was not believed, however, and Moti was sentenced to death.

Who was to blame for this tragedy ? Mustt. Mahadevi was not happy with her first husband, who, indeed, had married again. She and Moti had lived together happily for over two years. But the law was allowed to disturb this harmony. An infant was murdered ; its father sentenced to death, its mother cast adrift. The fault lay primarily on Kalka. But a heavier responsibility rested on the Tahsildar, who thought fit to issue a warrant of arrest, even though the law did not compel him to

do so. He forgot that human nature is often better guided by deeper sentiments than those of artificial virtue.

Ever since this tragedy I have issued instructions to the police that warrants for arrest for women in cases under sec. 498 I. P. C. must not be executed without prior reference to me. When referred to me, I as District Magistrate direct (notwithstanding any other instruction on the warrant) that the woman may on arrest be released on her personal bond. The result of this order has been, I believe, a great decrease in the institution of cases under sec. 498 I. P. C.

XI

MAINTENANCE OF WIVES AND CHILDREN

A magistrate may direct a man to pay an allowance, not exceeding a hundred rupees a month, for the maintenance of his wife and children, whether legitimate and illegitimate. (sec. 488 Cr. P. C.) If later a civil court gives a decision at

variance with his order, the magistrate must cancel or amend it accordingly. (sec. 489 (2) C. P. C.)

No order for maintenance may be passed if a wife refuses to return to her husband without due cause ; and any such order may be cancelled if she is found to be living in adultery.

The order for payment of maintenance may be enforced in the same manner as if it was a fine. A sentence of one month's imprisonment may be inflicted for default in paying the maintenance for any month or for a portion of a month.

A peculiar application once came before me. A man died leaving a widow and two minor orphans. The orphans (through a guardian, of course) sued their mother for maintenance. An order under sec. 488 Cr. P. C. may be made against any 'person' who neglects to maintain 'his' legitimate or illegitimate child. Under sec. 4 (2) Cr. P. C. read with sec. 8 I. P. C. "the pronoun 'he' and its derivatives are used for any person, whether male or female ;" while 'person' is of course, of the common gender. It seems, therefore, that such a suit could have been maintained. But it was the only application of its kind I

have known ; and I cannot remember what I did with it.

XII

HARASSMENT OF WOMEN

It is unfortunate that most magistrates harass women applying for maintenance, by repeated adjournments and otherwise ; and constantly brow-beat them to return to their husbands. All this is hard on the woman, who usually has no means and little shelter. In the latter part of my service I gave priority over other cases to those under sec. 488 Cr. P. C.

Most cases under sec. 488 Cr. P. C. are therefore either compromised or dismissed in default. Not five per cent are decreed. And I can remember only two or three throughout my service in which that decree was regularly executed. Even then, much difficulty is often placed in the way of the unfortunate woman.

I remember one case in which, after repeatedly allowing him time, I sentenced the defaulter to imprisonment. There was no provision for appeal ; but the Judge mistakenly allowed one. The matter

was taken to the High Court in revision ; but the petition was summarily dismissed with one remark "This is an application by a woman asking that her husband be imprisoned. Rejected."

XIII

SOME MAINTENANCE CASES

In most cases of maintenance the woman is deserving of compassion ; but not in all. Once I had before me such a suit between a Muslim and his wife. When they came before me, their counsels asked for an hour's adjournment, as the parties wished to compound. This I gladly allowed. After an hour, everybody returned. The woman had agreed to forego her dower, and the man had divorced her. Apparently her real wish was to marry another. This ended the case ; and I was much impressed by the celerity with which the matrimonial law of Islam is worked. I do not speak in sarcasm when I say I approve of it.

An unmarried mother cannot claim maintenance for herself ; but may do so for her illegitimate child. It has however been rightly remarked

that while maternity is a fact, paternity is only a guess. Such cases are most difficult to prove ; though I have decreed a few. I remember one in particular. The woman, exasperated at the defendant's denial of all intimacy with her, suddenly blurted out that he had ringworm on his genitals ; and that she herself had rubbed ointment into it. She challenged him to disprove this by medical examination ; but he declined to do so. This clinched the issue ; and maintenance was decreed.

BOOK II
OFFENCES AGAINST PROPERTY

PART I

THEFT AND STOLEN PROPERTY

I

OFFENCES AGAINST PROPERTY

Theft (Sec. 378) may be briefly described as dishonestly taking another person's property. If this is done by means of threats, it becomes extortion. (sec. 383) Theft or extortion accompanied by violence is robbery. (sec. 390) Robbery by five or more persons is dacoity. (sec. 391)

If the property illicitly acquired was not in the actual possession of the owner, the offence is criminal misappropriation. (sec. 403) If the property misappropriated had been entrusted to the culprit, the offence becomes criminal breach of trust, or as it is ordinarily called, embezzlement. (sec. 405)

Property secured by any of the above illegal methods is called stolen property. (sec. 410)

Cheating (sec. 415) means deceiving a person into doing or omitting to do what he otherwise would not do or omit to do. Fraudulent Deeds

and Disposition of Property, when the element of deception is either remote or not clear are dealt with from sections 421 to 424 I. P. C.

Mischief (sec. 425) may be briefly described as causing damage to property.

Criminal trespass is defined in sec. 441 as any entry of property with intent to commit an offence, or to insult, intimidate or annoy the person in possession. If the object of the trespass is a building tent or vessel it becomes house trespass (sec. 433).

House-breaking (defined in sec. 445) is a more serious form of house trespass. As the name implies, it means breaking into a house by making an entrance, or by leaping over a wall or by breaking a lock or by committing an assault.

II

THEFTS

There are five essential ingredients in the offence of theft. They will appear by splitting up

as the definition in sec. 378 I. P. C. as follows :—

“Whoever (a) intending to take dishonestly (b) any ~~imm~~moveable property (c) out of the possession of any person (d) without that person’s consent (e) moves that property in order to such taking, is said to commit theft.”

There are four penal sections for ordinary theft—

379—Ordinary

380—In a building, tent or vessel

381—By a clerk or servant

382—After preparations for violence.

Imprisonment must form part of the punishment for the latter three offences. Whipping in lieu of other punishment is permissible in all cases except sec. 381.

All cases of theft are cognizable ; but under executive orders they are not investigated unless the property lost is considerable or unless the offender is caught and brought to the thana. A great number of such cases concern petty thefts of crops.

III

PETTY THEFTS

Any property can be the subject of theft. The law does not prescribe a minimum value in respect of which there can be theft.

Strictly interpreted, it is theft if I dip my pen into your ink. But sec. 95 I. P. C. comes to the rescue. It applies in fact to all offences, and may be summarised as follows :—“Nothing is an offence, if the harm done is so slight that no person of ordinary sense and temper would complain of it.”

Only on two occasions have I used sec. 95; and I shall describe one. It happened in what I have often described as the worst administered district in which it has been my lot to serve. A starving man was found one morning picking up the few grains left on the threshing floor. For some reason, the villagers arrested him; and the police anxious to score a certain conviction, chaled him for theft. The stolen gram could not have been worth a pie. I held that owing to the trifling value, no theft had been committed.

IV

GOVERNMENT STAMPS AND STATIONERY

The Post Office found a service stamp used on a private letter. The matter was handed over to the police. The investigating officer came in great perplexity to his Deputy Superintendent. "I have been all through the Post Office Act," he said; "and can find no penalty for this." There is not. But service stamps may be issued only to Government departments. So it was obvious that the man who used it, had either stolen it, or, if a Government servant entrusted with such stamps, had misused it. In the former case he was guilty of theft, in the latter of criminal breach of trust.

The same argument would apply to those who use Government stationery for private purposes. A Ceylonese official I met, naively told me he used Government stationery freely; only he crossed out the superscription 'On His Majesty's Service'. I am afraid he was sailing very close to the wind.

V

c

A CLEVER RUSE

Two wandering criminals, accompanied by a boy, visited a fair. They marked out as their victim a man with whom they had noticed some currency notes. The boy took a long stick; and with it surreptitiously applied some filth to the back of the man's coat. This done, he informed him of his uncleanness. The victim hastened to a tank near by, threw off his clothes, and started to bathe. While he was in the water, the two adult conspirators came along, and took possession of his coat, notes and all.

The very first case in which I awarded imprisonment (the third I tried) occurred in daylight on the banks of the Ganges at Allahabad. Some respectable ladies were bathing there when the thief came along, and ran off with their clothes. Fortunately he was caught; otherwise the ladies would have been placed in a most awkward predicament. If I remember aright the man confessed his guilt. He may have been a

Barwar ; but I forgot his caste. I gave him the maximum I then could—one month's rigorous imprisonment.

VI

CATTLE THEFT

Cattle theft in police terminology means theft of bovine cattle.' It is seriously, regarded; and rightly so, for it so closely concerns the welfare of the rural areas. Statistics regarding it are separated from those of other forms of theft.

All reports of cattle theft are investigated. When mere strays are reported, they are not investigated unless the owner expresses a suspicion of theft. In some western districts, however, all strays are registered as thefts.

The Superintendent of Police of an eastern district once remarked to me on the extraordinary success of investigation into cattle theft. The reason, as I pointed out, was that no loss was entered as a theft till the animal had actually been found, usually by the owner himself. After that the task of the police is easy.

Under the Police Regulations, the district magistrate has to appoint a registration mohurrir for every cattle market. Registration is voluntary ; but as a rule every one safeguards himself with it. A description of the animal, together with its value, is noted on the certificate. This has to be signed by both the seller and the purchaser ; and also by witnesses identifying them. In most cases the 'signature' is a thumb impression.

Stolen cattle change hands more than once after a theft. In most cases a chain of two or three transactions is proved. The descriptions given in reports and registration certificates are however mostly stereotyped ; and if the person with it whom it is ultimately found, declared it to be his own animal, his conviction would be difficult. But usually he denies the recovery from his possession ; and this establishes his guilt.

VII

THEFT OF AN ELEPHANT

Harihar Singh zamindar had an elephant. One night late in June, it disappeared. Ramhit,

the mahout or pilwan, afraid to tell his master, went off alone in search of it. By dint of enquiry he tracked it as far as Chochakpur, some twenty miles away. The Ganges flows below Chochakpur; and crossing it, Ramhit got to Dhanapur, where there is a Police Station.

In the Bazar there he met Buddhu Chaukidar who told him he had seen an elephant coming towards Dhanapur the previous evening. There was a mahout on it; but the elephant was bare-backed. While the two were in conversation, one Laturi Teli came up and informed them that he had just seen a bare-backed elephant on the riverside. The three proceeded to where Laturi had just seen the animal. They found it in a ravine; but the pilwan was not there. After waiting for him a while, they took the elephant to the Thana.

The Darogha now bade Buddhu Chaukidar search for the missing pilwan. Presently he was seen coming along with a hatchet in his hand. Buddhu recognised him immediately. He promptly arrested him and took him to the thana. His name was Zahir and he was a professional pilwan.

In the meanwhile Harihar Prasad had

own thana at Shadiabad.

Zahir was prosecuted for the theft of the elephant. His defence was that Harihar Singh had ordered him to take the elephant to a barat; and later had sent along a man to catch him and report him falsely. No enmity worth the name was however forthcoming. Zahir's defence witnesses said nothing good of him.

Zahir was convicted of theft under sec. 379 I. P. C. and was sentenced to two year's R. I.

VIII

PANAHI

An offence akin to cattle theft is one known to the police as *Panahi*. It is punishable under sec. 215 I. P. C. That section refers to all forms of property; but I have heard of such cases only with respect to cattle.

I have had a few before me; but can remember none in any detail. What happens is as follows. A bullock is stolen. A few days later a friend of the thief comes along and offers, for a consideration of course, to have the animal restored to the owner. If he is paid, the

messenger tells the owner to search in a certain quarter after a few days. And the missing animal is found when and where indicated.

The only place where I knew of such offences was in Ghazipur along the Jaunpur and Azamgarh border. I have heard recently of several cases there.

As already remarked the intermediary can be punished under sec. 21; I. P. C.; but only if he does not use "all means in his power to cause the thief to be apprehended and convicted."

It was wonderful prescience on the part of the framers of the Indian Penal Code to have thought of so uncommon an offence.

IX

CRIMINAL MISAPPROPRIATION

Criminal Misappropriation is usually lightly regarded. It is not a cognizable offence; and with the permission of the court it may be compounded. It must be noted that the subject of the misappropriation must be 'property'.

Since sacred bulls are nobody's property, they cannot be misappropriated. But this ruling

has been somewhat stultified by others which say that if the bull is dedicated to a particular deity, it is property. For practical purposes, however, this is a distinction without a difference.

I can remember convicting only one case under sec. 403 I. P. C.; and that I admit was 'cussedness' on my part. A very miserly zamindar and his son shot a wild deer and retained the skin. I fined them a hundred rupees each. But the Judge allowed the appeal, rightly saying the wild deer was nobody's property.

Section 404 I. P. C. is a more serious section. It relates to misappropriation of the effects of a deceased person. It is a cognizable offence and imprisonment is imperative.

I had such a case before me once; but evidence was very vague; and little could be done. Very recently I read in a newspaper of a case in Lucknow, where some men dug up a grave and removed the shrouds from the dead—certainly a unique case and showing the tremendous value cloth has acquired.

X

BURGLARY

The term 'burglary' is not found in the Indian Penal Code. But the police have adopted the dictionary meaning which is 'house-breaking by night with intent to commit theft'. This is the commonest of all offences which the police have to investigate.

Burglary comes under sec. 457 I. P. C.; if the burglars come armed, then under sec. 458. The maximum sentence is fourteen years. Whipping may be awarded in lieu of imprisonment. A fine may also be imposed.

The offence is punishable even if the burglar returns empty-handed. But when he actually does take away anything, it is not usual to frame a charge of theft in addition to one of house-breaking. Sec. 457 I. P. C. is sufficient by itself. In course of time one forgets that the section is really one of trespass, and looks on it as an exaggerated form of theft.

The vast majority of burglaries are effected by digging a hole in the wall of a house—not a difficult matter in villages where houses are

mostly katcha. The hole is known as a naqb or a saindh.

These offences are notoriously difficult to investigate. The annual police administration report of the district to which I am posted shows the percentage of convictions to investigations in certain types of cases to be as follows :—

	Murder	Dacoity	Robbery	Burglaries
1943	25.00	22.20	22.20	9.02
1944	16.00	24.00	12.50	5.60

These figures speak for themselves ; and if enquiries were made, it would be found that in all cases the convicted burglar was captured on the spot. The only other method of proof is identification of the accused and of the stolen property. I have never known the former to be reliable ; the latter seldom so. Even if property is satisfactorily identified, the conviction usually comes under sec. 411 I. P. C., that is for receiving or retaining stolen property.

Under sec. 337 C. P. C. it is now permissible to make approvers in cases of burglary ; but I

have never known recourse to this provision of law.

Preventive action under secs. 109, 110 Cr.P.C. is taken mainly to keep burglaries in check. Of the efficacy and the practical working of these sections I shall speak elsewhere.

XI

STOLEN PROPERTY

Property secured through, theft, extortion, robbery, dacoity, misappropriation of breach of trust is 'stolen property'. (Sec. 410 I. P. C.) To receive or retain it is punishable under sections 311, 412 I. P. C. Anyone assisting in concealing or disposing of it is liable under sec. 414.

Stolen property is rarely capable of proper identification. If those found with it only had the immoral courage to insist that it was their

own, their conviction would be well-nigh impossible. But usually they are foolish enough to deny the recovery of the property from their possession ; and when they do that, the presumption of their guilt is obvious.

Even if they admit the recovery, a conviction is difficult if there are several inmates in the house. It is usual to hold the head of the house responsible ; but that is not a necessary presumption in law. I have known an aged man or woman as the head of an house, while it is their stalwart sons, who are committing crime.

Then again stolen silver and gold is taken at once to a goldsmith, who alters its shape beyond recognition. In several confessions one hears the name of such gentleman, who take in stolen gold and silver.

No sensible person keeps identifiable stolen property in his residential house. It is usually placed in a barn or is buried outside. It is impossible then to say who had possession of it. But if the culprit is foolish enough to lead the police there, then that part of the confession becomes admissible in evidence. (sec. 27 of the Evidence Act)

XII

PLANTING STOLEN PROPERTY

This is an old day tale and refers to the days of the statutory civil service. A certain wealthy gentleman, albeit of little education, was recruited to that service. He was posted as Joint Magistrate to a district I know well. He employed a Bengali secretary who wrote his judgments for him.

The secretary demanded an increase of salary; but the civilian, being of niggardly disposition, would not agree. The secretary thereupon ceased to work for him; and all judgment-writing came to a stand still. The civilian then reported to the police that the Secretary had detained some of his law books. That might have been explainable; so when his house was searched, some crude opium was also found there.

There was a strong Bengali community in that town; and they all now took up the matter. The secretary was acquitted of the charges against him. A commission sat on the Joint Magistrate; and he was dismissed from service. I speak of the early mineties.

XIII

A DUPE

A friend of mine, also a magistrate, was posted to a hill station. His servant came to him one day, with a bundle of currency notes, which he said represented his life's savings. He referred to the recent epidemic of thefts in the town; and asked his master to keep them safely till he could bank them. The master was kind enough to agree.

A day or two later the police came along. The servant had been strongly suspected of a theft. The notes he had left with his master were part of what had been stolen !

XIV

A DANGEROUS GAME

It was an important railway junction where pandas often came to entice pilgrims to a holy place. These pandas often travelled without tickets; but were allowed to pass, for a consideration of course. The proceeds, if the truth

be told, were divided between the ticket collectors and the constables on duty,

One day a breach occurred between the two. The railway staff then took strict action against policemen who travelled. They exsessed a constable who carried a few seers of firewood with him. They reported a sub-inspector, who travelled second class, though his pass was only for intermediate class.

But the ticket collectors had counted without their host. One day a passenger reported the theft of a watch and some other articles. The houses of the ticket collectors were searched; and in one, the stolen articles were found !

He was arrested and sent to my sub-divisional headquarters. I knew the game, however, and directed his release on bail. Later he was prosecuted; and my successor tried the case. He held that the stolen goods had been planted in the house of the ticket collector.

The moral: to fight the police is to play with fire.

PART II

EXTORTION

I

EXTORTION

If by means of threats anyone induces another to part with property or a valuable security then the offence is Extortion. (sec. 383) The penal sections are as follows :—

	Threat with a view to extort	Actual extortion
Ordinary ...	335	384
Threat to kill, hurt	387	386
or		
Threat of false accusation	389	388

Cases of extortion are rare. The evidence either stops at mere intimidation or shades into robbery.

I remember a case in which the dacoits, unable to remove the anklets from the person of a wealthy widow, threatened to chop off her legs. This caused the servants, who knew the art, to pull them off for the dacoits. This definitely

was extortion ; but having been committed in the course of a dacoity, such a charge would have been superfluous.

I have tried only one pure case of extortion ; and that began as a case of bribery. Of that I shall now proceed to speak.

II

JUDICIAL EXTORTION

Rashid-ud-din came of a very good family. At the age of 23 he was appointed a Naib Tahsildar. Within nine years he was officiating as deputy collector. The events we are about to describe occurred when he was entrusted with the trial of cases against the various Control Orders.

Messrs. Jai Narain Jagat Narain sons of Pt. Sadho Lal jointly held a retail cloth business. On 1st June 1944, this shop sold to one Dwarka Prasad six pieces of chintz at a rupee per yard, though the control price was only eleven annas a yard.

This was a violation of the Cotton Cloth and Yarn Control Order ; but a prosecution required the sanction of Government. This was secured against Jai Narain alone ; and the case was made over to Mr. Rashid-ud-din for trial.

There is good reason to believe that an intermediary tried to arrange a solatium for Rashid-ud-din. But Sadhu Lal, though anxious for *sifarish*, was either reluctant to part with money, or unwilling to rise to the amount demanded.

On 18th August, when the case came up before Rashid-ud-din, Jai Narain put in a written statement that the chintz had been sold in his absence and against his instructions by his servant Babu, with whose services he had since dispensed. This was confirmed by the only substantive prosecution witness Dwarka Prasad.

This left no evidence against Jai Narain ; but he offered to produce Babu, obviously as a witness. Instead of discharging Jai Narain, as he should have done, Rashid-ud-din, allowed an adjournment. Apparently his reason was to make Babu the scape-goat, if Jai Narain could not be convicted.

On the 21st August, Babu was put up. He confirmed what Jai Narain had said. Rashid-ud-din

though there was no sanction against Babu examined him as an accused. Later he framed charges against both Jai Narain and Babu.

This was quite illegal; and Rashid-ud-din must have known that it was quite illegal. There was not an iota of evidence against Jai Narain; and no Government sanction existed for Babu's prosecution. Rashid-ud-din's object was to impress upon them that he still held them in his power.

After this Rashid-ud-din gave no less than three unnecessary adjournments; but finally called the case for judgment on the 2nd September. Subsequent events showed that the judgment was ready that morning, though the amount of fine money was left blank, obviously as an element of bargaining.

On the forenoon of 2nd September, Rashid-ud-din called his reader to his bungalow; and bade him inform Sadho Lal that everything could be settled for a thousand rupees. This was duly communicated to Jai Narain and Sadho Lal.

As Rashid-ud-din was leaving court that day, the reader reminded him that he had to deliver judgment in the case. This would have taken only a couple of minutes; but Rashid-ud-din

said he had no time to do so. The case was adjourned to the 4th.

The truth was that Rashid-ud-din had not lost all hope of extorting money from Sadho Lal. He wished to see if the message sent through his reader would bear fruit.

Sadho Lal was unwilling to part with any money especially as his lawyers had assured him that his son could not be convicted. But he could not reckon on the vagaries of the court, and the message he received from the reader had alarmed him. To cut a long story short, he at Rashid-ud-din's instance, proceeded to his bungalow at 8 p.m. that night, the 2nd September.

At the bungalow Rashid-ud-din demanded Rs. 2,000 from him, otherwise he would imprison, and heavily fine Jai Narain. Sadho Lal protested that he did not have so much money; and moreover that the case against his son was a very weak one. Eventually Rashid-ud-din agreed to take Rs. 1,500, but nothing less; and for that he would acquit Jai Narain, and fine Babu between Rs. 200 and Rs. 300.

To enable Sadho Lal to get the rest of the money together, Rashid-ud-din agreed to give a further adjournment in the case. It was

arranged that on the 4th, an adjournment to the 8th was to be sought on the ground that Babu had cholera.

Sadho Lal was in great distress. He had made up his mind to lose this Rs. 500; but the prospect of having to pay yet another Rs. 1,000 dismayed him. From Rashid-ud-din's bungalow he proceeded at once to the house of a relative Pt. Ram Narain who was a Sub Inspector in the Criminal Investigation Department. At 9 a.m. on the 4th September, Ram Narain reported the facts to the Superintendent of Police. To test the truth of the story that gentleman advised that an application for adjournment should be put in as had been arranged.

Such an application actually was put on that day by Jai Narain's counsel. It mentioned that Babu was down with cholera. It was unaccompanied by a medical certificate; but Rashid-ud-din in his own hand endorsed thereon the order 'Postponed for 3-9-44'.

This was a supine order for a martinet like Rashid-ud-din, who boasted of his severity,

and made a virtue of the fact that he never allowed a single day for payment of fines.

The adjournment confirmed Sadho Lal's story. The S. P. then got in touch with the District Magistrate. At 7-15 p.m. on the 5th, Sadho Lal was taken to the collector's residence where he gave a complete account of all that had happened. It was now decided to lay a trap for Rashid-ud-din.

On the night of the 7th September, Sadho Lal came to the Collector's residence with notes worth Rs. 1,000. The Collector and the Superintendent of Police proceeded with him to a cottage, which was next door to Rashid-ud-din's bungalow. Two ladders were placed against the boundary wall, and from there an excellent view could be had of the unoccupied half of the bungalow, of which Rashid-ud-din occupied the northern half. An electric light at the corner made things even clearer.

Then Sadho Lal entered Rashid-ud-din's compound. He met Rashid-ud-din in the portico; and the latter led him to the south or unoccupied side of the bungalow. Sadho Lal once again

asked for a concession ; but Rashid-ud-din said he had guests and wanted the money quickly. Sadho Lal then took out currency notes worth Rs. 650 and handed it to Rashid-ud-din. Rashid-ud-din asked for the rest ; but Sadho Lal once again begged for a reduction.

As he did so, he coughed in an affected manner. The two watching officers, realising this was the signal, leapt over the wall and rushed towards Rashid-ud-din.

Rashid-ud-din then knew that the game was up. He flung away the notes, and giving a cry of fear and alarm, he rushed towards the S. P. and seized him by the throat. That officer soon overpowered him ; but they both fell to the ground.

The S. P. then searched Rashid-ud-din's person, but found nothing on him. The Collector picked up the notes worth Rs. 650 which had been thrown on the ground. Sadho Lal still had the remaining Rs. 350 with him.

After this everybody went into Rashid-ud-din's office, and there he handed over the unsigned judgment. It showed he had intended to acquit Jai Narain and to fine Babu. The fine was to have been in complete hundreds for the word

'hundreds' appeared ; but the number of hundreds had still be noted. Below the space left for his signature, Rashid-ud-din had noted his magisterial designation and also the date '2nd September 1944.' This made it quite clear that he had had every intention of delivering the judgment on that date ; but for some sinister reason had deferred doing so.

Rashid-ud-din's defence was that he was the victim of a gigantic conspiracy. The court examined the cases of fifteen alleged enemies. Not one of them was such as to warrant the conclusion that the so-called enemies had organised a fiendish conspiracy against Rashid-ud-din.

The fact was that for at least two years Rashid-ud-din had been following a career of corruption. His *modus operandi* was to establish a reputation for excessive severity ; and then to extort money from people on promises of comparative leniency.

The defence itself had shown how for about two years Rashid-ud-din had been collecting letters and even mere scraps of paper for the obvious

purpose of establishing enmities, should his evil deeds be discovered. In one instance he had had such a slip inserted into a file ; in some others he had somenow got hold of papers from official records.

To protect himself farther, he made it a practice to consult his immediate superior, Mr. R. before deciding any case. Mr. R who was a very junior officer, admitted this ; but said he always agreed to whatever Rashid-ud-din said. In this manner did Rashid-ud-din foist on Mr. R. the responsibility for any judgments, just or unjust, which he cared to deliver.

Rashid-ud-din endeavoured to establish an alibi for the night of the 2nd. As for the raid on the 7th he declared that no notes had been found on the spot, that the two officer's had suffered from a hallucination, and that he (Rashid-ud-din) had thought them to be dacoits when he rushed at them. None of this defence found favour with the court. Among the defence witnesses were a Khan Bahadur and two deputy collectors ; but the court disbelieved them all.

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The court accepted the evidence of the witnesses for the prosecution ; but made the following remarks :—

“There is one point to be remembered, when dealing with the witnesses for the prosecution. All of them endeavour to save themselves from any suggestion that they abetted the payment of a bribe.

“We must make allowances for this hesitancy. Such a tendency will continue, so long as the law punishes not only the man who receives a bribe, but also him who pays it, and all who arrange for it. We must not allow this tinting of evidence to bias our assessment of its value.”

This was not an ordinary case of bribery where money is paid for the doing of a favour. Money was extorted from Sadho Lal on the threat that his son and servant would be heavily punished ; though Rashid-ud-din must have known full well that such an order would be unjustified on the evidence and under the law. The charge of extortion was more apt to the case than one of bribery.

Ultimately Rashid-ud-din was convicted of two charges of extortion under sec. 323 I. P. C. On each charge he was sentenced to one year's rigorous imprisonment and a fine of Rs. 500. But the two substantive terms of imprisonment were to run concurrently. That is in all he had to suffer one year's rigorous imprisonment and a fine of Rs. 1,000 in default rigorous imprisonment for another year. Of the money, Rs. 500 was awarded as compensation to Pt. Sadho Lal.

PART III

ROBBERY AND DACOITY

I

ROBBERY AND DACOITY

Robbery is theft or extortion accompanied by violence.

Robbery committed by five or more men becomes a dacoity.

This is the legal distinction ; and it is preserved in statistics. But it is not the difference from the police and administrative point of view. From that point of view, the number does not matter ; what matter, is whether the offence (whether robbery or dacoity) took place in a house or on the roadside.

Roadside incidents usually occur about dusk, the victims most often being people returning from village bazaars. House-dacoities, especially if the culprits are armed, are the most serious of

all crimes from the police point of view. They always occur at night.

Robbery is punishable under sec 392 ; dacoity under sec. 395.

If anyone of several men engaged in robbery or dacoity causes death or grievous hurt, all are liable to punishment in the same way as he. (sec. 394, 396)

If the robbers and dacoits are armed with deadly weapons, or if in the course of a robbery or dacoity, death or grievous hurt is caused the minimum sentence is seven years. (secs. 397, 398) This is one of the few occasions the law prescribes a minimum penalty.

Preparation to commit a dacoity comes under sec. 399 ; assembling for the purpose under sec. 402.

Being a member of a gang comes under secs. 400 and 401 I. P. C. The former is meant for dacoits ; the latter for thief. In the third decade of the century, such cases were often launched. I described them as glorified badmashi cases.

II

PREVENTION AND PROOF OF DACOITIES

Dacoity is the most serious of all offences from the police and the administrative point of view. It is more serious even than murder, since it affects not merely the individual, but also society at large. The prevention and proof of dacoity is a subject which has greatly interested me; though my views thereon are somewhat unorthodox. I may not here dilate on the subject; but some remarks are necessary if a moral is to be drawn from the chapters which follow.

A confession alone can prove a dacoity against anyone; I mean not a confession by the accused himself, but by some accomplice. All other evidence can merely be corroborative.

In most investigations suspected persons and property suspected to be stolen, are put up for identification. I could say much regarding the unreliability of such evidence. Suffice it to say, however, that identification of property is never credible, unless the articles are so distinctive that an identification is superfluous. Identifica-

tion of persons, I have mostly found to be a matter of chance. And it is obvious that during a dacoity, the victims are far too absorbed in their own troubles, to think of identification.

A confession alone can knit the evidence together. Those who read detective stories, will notice that in the end the culprit always confesses; and indeed if he did not do so, he could never be proved guilty.

Therefore I say that full use should be made of sec. 337 Cr. P. C.; pardons should be offered liberally; and approvers should be encouraged in everyway. I do not hold with using confessions merely to entangle the confessor. But if he gives credible evidence against others, the clue should be followed up. Those against whom reliable corroborative evidence is available, should be prosecuted for the dacoity; while those against whom it is insufficient should be bound over under sec. 110 Cr. P. C. to be of good behaviour for three years. A weak dacoity case is the best kind of badmashi case.

As to prevention of dacoities. I believe the surest measure is a more liberal, or at least a more logical, distribution of firearms. I have heard it said in so many words, that honest,

law-abiding men require licenses for arms, whilst dacoits keep them without licenses. In my experience there has never been a dacoity in a house, or even in a village, where there is a firearm.

In a district in which I served recently there was one fire-arm to 900 of population; and of every three such guns, one was a muzzle-loader. It is true only one-third of the population consists of able-bodied males, but even then the proportion comes to one firearm for 300 people. It should also be noted that 20 per cent of these licenses belonged to the urban areas, which are immune from dacoities.

The rural areas may, therefore, be likened to an undisciplined army, in which there is one breech-loader and one muzzle-loader to each battalion.

Surely, even from the political view point, disarmament could go no farther. And even if numbers are not increased, a more logical distribution is desirable, so that no great area is left entirely unarmed.

III

A BAND OF OUTLAWS—PART I BUDDHA AND HIS COMPANIONS

Buddha of Pisawa had taken to dacoity as a profession. When this become known to the police he absconded and became an outlaw. Five others joined him—Maidani, Ram Prasad, Maula, Amira (who assumed the name of Mian Jan) and Sanwalia (who eventually betrayed them). Between them, this band had a musket, three pistols, a sword and two spears; though later Buddha sent for more arms.

These desperados hid all day in high crops, which abounded in that region. At night they sallied forth on their depredations. In several villages they had agents, known as thangis, who saw to their needs, brought them information; and collected other bad characters to accompany them. Their principal thangi was Kundan brahmin of Raghania. Another was Roshan brahmin of Dali ka Nagla. Maidani's father also gave information.

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Sanwalia was a stalwart youth. He was a teli by caste, and a resident of village Namtoli. When about nineteen years of age he had enlisted in the army; and after a few months was sent home to attract more recruits. While at home he came in touch with one Nawal Singh. With him and his gang he took part in a dacoity. But this was only by way of pastime; for on termination of his leave, he returned in his regiment.

A year later, that is about February 1918, he was invalided; and was at a loose end for about three months. Then he associated himself with different gangs, one of which was led by Neola Chaudhri of Nauli. He did not, however, consider he was being fairly treated in the division of the spoils. Moreover, the police had come to know that he belonged to this gang; and he had to be constantly on the move to avoid arrest.

One day Sanwalia met a faqir who introduced him to Buddha and his band of outlaws. Sanwalia decided to throw his lot in with them. From that day onward we have a detailed and continuous account of the doings of these men. Sanwalia's full confession in his own words is before me. What follows in

the next chapter is a summary. I believe the full story would repay reading—not only because of its vividness, but also because it illustrates the underground unrest which prevailed in the closing year of the First World War.

IV

A BAND OF OUTLAWS—PART II
SANWALIAS CONFESSION

The existence of this band of outlaws was known to the police. Pt. Bhola Nath, Station Officer of P. S. Gonda was especially hard on its heels. Buddha decided to dispose of him. The Sub-Inspector had gone to district headquarters to give evidence; and the desperados decided to waylay and kill him on his return. All night they waited on the roadside with loaded weapons. But fortune was kind to Bhola Nath. Something delayed his return; and so he escaped with his life.

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Some thirty-one dacoits assembled on 18th September and proceeded to Nagla Dhan Singh. Getting to the chosen house, Maidani

who held a pistol, leapt on to the roof, accompanied by Ram Prasad and four others who carried lathis. Mian Jan and Maula Teli, each with a pistol, guarded the entrance door. The others stood by with lathis ; the leader, Buddha, with a gun.

The villagers were a valiant lot ; and prepared to resist. A great fight ensued with the dacoits. Three of the villagers were severely injured ; and so was a dacoit named Khubi, who, however, managed to get away.

Some ten or twelve villagers got on the roof and confronted the six dacoits there. Maidani cocked his pistol twice, or thrice ; but each time it misfired. Ram Prasad was felled by a lathi blow on the head ; and his five companions carried him away to a field.

This was not noticed by the dacoits on the ground, who imagined their comrades had been locked inside the house. Buddha called to the villagers on the roof to surrender them. But those men, without realising what they said, replied they had no intention of doing so. Buddha warned them that if they did not obey, they would all be killed. Two of the men on the roof responded by throwing stones

at him. Buddha then fired thrice. The two men fell dead. A third was mortally wounded. Thus cowed, the villagers called out that they would open the door; but that there were no dacoits there now. On this Buddha cried out "If you had said this before, I would not have shot you. You are responsible for the death of your own men."

Then the dacoits retired to the juar field where Ram Prasad had been taken. They left his blood-stained clothes there; and gave him some of their own. They found a charpoy in a field near the canal bank. On this they carried him away to Kundan's juar field in Raghania. There they entrusted him to the care of Ram Sarup, one of their number; and left twenty rupees for his care and treatment. He was left there till he recovered which was after some days.

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Roshan brahmin acted as thangi for a dacoity at Dali ka Nagla on 23rd September. The gang assembled in his juar field, where Roshan brought them refreshment. On reaching the chosen house, they found the owner asleep

at his door. The dacoits laid hold of him, and entered. They broke open a box in which they found eight seers of silver jewellery.

By this time the noise had roused the villagers. They called out they were coming; but were silenced on hearing a single report from Buddha's gun. Buddha felt however that no more booty would be found there. So he shouted 'Ram Bol', the signal for dispersal. The dacoits released the *maldhani* (who had till then been held down); and returned to the grove where they had assembled.

In this grove Buddha divided the loot. Roshan and another thangi each received a silver *basli*. Kundan was given the share for the six men from Raghania; and was bidden to distribute it between them. Four others were also jointly given some jewellery, with similar instructions. "We cannot in his place," said Buddha, "divide between individuals."

Buddha retained the share which fell to him and his five closest associates. After some days he sold it to a sonar living about two miles from his house at Pisawa. He got Rs. 250 for it. This was divided into ten equal parts.

One went to each of the four weapons ; and one to each of the six members of the band.

After the dacoity at Dali ka Nagla, another thangi, Sihula by name, took the gang to the house of a brahmin. There were only women there ; and they had neither jewellery nor money. Buddha rebuked the thangi, calling him a *be-imam* for worrying such poor people.

The gang wandered about in several police circles, committing dacoities with varying success. When it got back to Buddha's village Pisawa, Maidani fell ill and had to be left at home. His father, another faqir, vowed he would not let his son go with the gang again. But Maidani was arrested at his house.

His father heard the police were after him as well ; so perforce he too joined Buddha's gang. But he refused to go to the actual scene of any dacoity. Buddha magnanimously paid him a *baithai bant* (or sitting share) of the spoils. The protestations of Maidani's father make amusing reading.

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The dacoits halted in the jungle near Adhaita Nagla, where Munshi teli brought along the Baba from Kanakpur. They asked him for information about some rich sahuakar. He replied "There is a great Bhagwan of a gadedia in Nagla Gadedia. He is a sahuakar, and I know him well. He used to give me food and drink; but this year he has not done so. I wish you would dacoit him."

That night the dacoits went to the gadedia's house. Sanwalia' to whom Buddha handed a pistol, and four others, climbed on to the roof. The barking of a dog, which was lying near him, roused the gadedia, who was sleeping on the roof. He confronted the dacoits with a lathi. Sanwalia fired his pistol; but shot wide of him. "It is a great sin to kill a man" he said in his confession.

The pistol was defective; the hammer broke injuring the forefinger and middle finger of Sanwalia's right hand. Nevertheless the gadedia ran off; and the dacoits on the roof then jumped down into the yard, and unchained the entrance door for their comrades to enter. Buddha took a pistol from Maula; and handed it to Sanwalia to replace the one which was damaged.

There were four or five women in the house. The dacoits relieved them of their necklaces and armlets; also of a pair of anklets and a bandani. A gold senta (a nose peg) was removed from a woman's nose. A man sleeping inside was wearing gold ear-rings; and this too the dacoits took.

No villagers attempted to interfere; but the dacoity was not worth the trouble. The gadedia was not rich; and the Baba had suggested his name only to satisfy a grudge.

Buddha, the dacoit captain, knew of a rich sahuکار at Kanchan ka Nagla. He had often wished to dacoit his house; and now decided to lead his gang there. On the way they passed a lonely house in course of construction. Some men were sleeping in it; and the dacoits called to them for fire to have a smoke. The man replied they could have the fire; but "Why speak to us like the darogha?"

On this Buddha cried "The darogha is nothing before me. I am the Collector of the Night. I have authority to loot whom I like and to beat whom I like and to pass whom I

like." He then turned to his followers, "Now, jawans," he said, "I give you an hour to sack the house." This the dacoits readily did so, though only clothes were found. The noise attracted the residents of the village near by; but Buddha silenced them by firing his gun twice.

Getting to Kanchan ka Nagla the dacoits found the sahu^{kar}'s house too formidable to attack with safety. The village chaukidar on patrol observed them; and called to the villagers to confront the thieves. Buddha now tried a subterfuge. "We are not thieves, but wayfarers" he cried out. "We only want a smoke." The chaukidar was deceived; and when he went close to the dacoits, Buddha seized him. He ordered his followers to beat him as he was making too much noise. This they did; and they also tied him up, and left him on the roadside.

The dacoits, however, did not attempt to attack their real objective. They solaced themselves by looting a bania's house near by. Then they retired to Tulai. There in a bullock run, Buddha buried his gun for the time being, though retaining his pistol.

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Several members of the gang, now began to tire of these ceaseless wanderings. Sanwalia decided to return home ; and two others went with him. On 23rd October these three were resting in a house, when the mukhia and other villagers surrounded them and captured them. Sanwalia was carrying a loaded pistol ; but made no attempt at resistance. Later he made a full confession to the police, which he repeated to me.

V

A BAND OF OUTLAWS—PART III
ROUNDING UP THE GANG

Dacoities became an alarming phenomena in the western districts of the province during the second decade of the century. The conclusion of the Great War in 1918 did not cause them to abate. The year after, it was obvious that several gangs were ranging through all the thanas in the south of the district to which was I than posted.

Matters came to a climax on 18th September when dacoits attacked a house in Dhan Singh ka Nagla. The dacoits had fire-arms.

Two villagers were shot dead ; one was mortally wounded and two others were seriously injured. But the villagers had also rendered a good account of themselves. Two dacoits were injured, one of them so seriously that he had to be carried away by his companions.

Five days later the same gang ; raided a house in Dali ka Nagla, over ten miles from Dhan Singh ka Nagla. Other dacoities followed in neighbouring thanas.

Sub-Inspector Thakur Singh of P. S. Sasni visited Raghania on the 22nd and 23rd September ; and found several of the suspected villagers had been absent for some days. On their return home on the 29th September, four were arrested by the villagers. Among them was Kundan brahmin, who now chose to make a confession, and later also surrendered some looted property. On 3rd October, a half-witted youth named Jugla was arrested. He also made a confession, naming several of the dacoits. Many arrests followed these confessions.

But dacoities did not cease ; for a band of six outlaws, the nucleus of the gang, was still at large. On the 19th October they had the audacity to attack a house in the Town Area

of Bijeygarh. A few more dacoities occurred after this. Sanwalia (who had a loaded pistol on his person) and two others, were arrested by the Mukhia and others of Birra.

They were taken to Sasni thana; and there Sanwalia made a clean breast of everything. He led Sub-Inspector Thakur Singh to a bullock run near a temple at Thulai, where he dug up a gun and some ornaments buried there by Buddha, the dacoit-captain. He was then placed before me; and it took two full days, the 2nd. and 3rd. November, 1919, to record his confession. This confession related to no less than fifteen dacoities. It was an extraordinarily vivid one; and Sanwalia's mode of delivery left one in no doubt as to his veracity.

Within a couple of months four other of the outlaws were captured. They were Buddha, Maidani, Ram Prasad and Maula. If I remember aright, Buddha was arrested by S. I. Bhola Nath; and there was a revolver-pistol duel between them at the time. Mian Jan (the remaining outlaw) could not be traced for some time; but the police followed up indications given by

Sanwalia, and discovered that his real name was Amira. He was arrested and identified by Sanwalia. Several others named by the three confessing accused were also rounded up. And then dacoities ceased.

Those against whom Sanwalia's confession stood alone, were bound over under section 110 Cr. P. C. to be of good behaviour for a period of three years each. Buddha, Maidani, Ram Prasad, Maula, Amira alias Mian Jan, Kundan and more than a dozen others were committed to the Court of Session for trial on several charges of dacoity. Sanwalia was made an approver, though evidence in corroboration of his confession was slight. All the accused were convicted by the Judge, who remarked that it was impossible to disbelieve Sanwalia. His orders were confirmed by the High Court. Buddha suffered the extreme penalty of the law. His principal associates were sentenced to transportation for life. Sanwalia, after fulfilling the terms of the pardon was released.

VI

DACOITS FROM NATIVE STATES

It was at Hathras in 1920. A constable on duty at a liquor shop, saw an intoxicated man walking away with a heavy bundle. He took him to the police station ; and there in the bundle were found no less than six loaded pistols. Under the influence of strong drink the man confided to the police that he was taking these weapons to his associates, who were to assemble that night in a village some six miles from the city.

Sub-Inspector Baldeo Singh organised a raid ; and captured six or eight men. They looked innocent enough ; but enquiry showed they came from native states and different districts ; and could not explain how they were found where they were. I committed these men to the Court of Session on charges under sections 400 and 402 I. P. C. ; but the Judge convicted them only under the latter section, that is for assembling to commit a dacoity.

VII

A WASTED OPPORTUNITY—PART I
THE STORY OF LACHMAN BARHAI

Lachhman barhai began his career of crime in 1915 when about twenty-five years of age. He attached himself to a formidable gang; and took part in a triple dacoity. Thereafter he laid low; and paid a visit to Naini Tal. While there, one of his associates implicated him in a dacoity with which he had had no concern. He was brought down under arrest; and prosecuted. But the Joint Magistrate discharged him. Thereupon, he was run in under section 110 Cr. P. C.; and was bound over. This was in 1916.

On his release a year later, Lachman wholeheartedly took to crime. Within about a year, he had taken part in four dacoities, to say nothing of a murder. In the latter half of 1918 he enlisted in the Army; but was demobilised a few months later. He had not been home fifteen minutes when the police arrested him again. He was now genuinely anxious to mend his ways; and applied in earnest terms to the District Magistrate,

offering to serve the sirkar farther by helping to round up his old associates.

He was placed before me on 13th March 1919, after he had been in custody for six weeks. The confession, which took me a whole day to record, was a remarkable one; in some ways more varied and interesting than that made by Sanwalia (Chapter II). Lachhman spoke in a clear deliberate manner; and his naivete commanded belief. But unfortunately for him he spared neither his old associates; nor the police; nor a certain local magnate.

The police, after some enquiry, denounced the confession, saying Lachhman had merely implicated his enemies. Those who read the tale, especially the part relating to the murder, will, however, be left with a shrewd suspicion as to the real reason for the hostility of the police.

My own conviction is that an excellent opportunity was lost to work out several cases. I did not then hold that subdivision but when

I did some months later, Sirdar, the dacoit-captain mentioned in the confession, was arrested; and led me to a lonely spot where he had buried his country-made pistol. I regret I have no knowledge of what ultimately became of Lachhman barhai.

In the Chapter which follows will be found selections from Lachhman's confession, though abbreviated, and translated into the third person. The complete confession is before me. It is, if anything, more varied and colourful than the statement made by Sanwalia (Chapter II) and will repay reading in full. Even better than Sanwalia's statement will Lachhman's confession, illumine subterranean life, during the closing year of the First World War.

VIII

A WASTED OPPORTUNITY—PART II

SKETCHES FROM LACHHMAN'S CONFESSION

The gang consisted of forty or fifty men from over a dozen villages. Sirdar Singh

of Rund ka Nagla was the principal member, if not the leader. He and several others were riyaya of Chaudhri L. and this gentleman often extended his protection to them when they were worried by the police.

The gang had several country-made pistols and swords, which were repaired by Kallu barhai of Darkoli, who was a clever workman and did so secretly. Naubat Singh and Genda Lal used to borrow their arms from Dara Singh of Bisana who had one licensed gun and two unlicensed ones. Others also borrowed licensed guns; and owned unlicensed ones.

Tilok Singh of Bisana brought his own gun to dacoities. He usually came on horseback or on a cart. Once he forgot to take back his mare, and left it tied up in a grove. The police found it; and he had to bribe the thanedar to get him off.

In the first expedition in which Lachhman accompanied this gang, three houses were dacoited in the same village, one after the other. Three shots from their guns kept the villagers away.

Sirdar said he had planned another dacoity and took the gang to Jawar near Mursan. Nearly forty men assembled there. Some went by rail, some by ekkas, some on foot and all at different times. Lachhman with Kanpal and Lokpal went by rail leaving Mendu by the 6 p. m. train. They reached the rendezvous, which was a tamarind tree with plum bushes and a farash tree near it, all in the patel (or tall grass) east of Jawar. But those who held arms did not arrive; and the dacoits were overcome by a presentiment of failure. So they came away.

Meanwhile the people of Akhaipur and Rund ka Nagla had noticed that many of their neighbours had left the village. Their suspicions were roused; and they made a report at the thana. When the absentees returned, they declared they had been to the houses of various relatives; and to give verisimilitude to their stories actually went off there for a while. The thanedar to whom they gave this same explanation sent out enquiry slips. When questioned the relations vouched for these visits; but admitted they were subsequent to the date of the reports.

The thanedar then sent for all these men and told them they had been entered in register No. 8, that it had been placed under surveillance.

Piran father of Radha Kishan purchased some property from the kaki (aunt) of Lekhraj of Mirgham. When both died; and Lekhraj came of age, he sued Radha Kishan. At Ondhua near Mirghami lived a brahmin zamindar named Rup Ram, who was very clever and very litigious. Lekhraj said to him "Bahora, if you fight this case and win it for me, you may have this property." So Rup Ram advanced money to Lekhraj; and the case was well fought.

When Radha Kishan realised he would certainly lose, he sent for Sirdar from Rund ka Nagla, and for Kanpal, Lokpal, Dhyam Singh (brother of Kishan Singh, mukhtar) and Lachhman barhai from Akhaipur. He also sent for the Patwari of Ondhua. When they were all at his house, he shut the door.

Radha Kishan and Karam Singh then said to the Patwari, "If we lose this case, we shall suffer greatly. Tell us how to win it." The patwari replied, "I can tell you one way of

winning it; if you dare to carry it out. Murder Rup Ram; and you shall win your case. Otherwise you will lose it."

Radha Kishan then took aside the four from Akhaipur and said "Look, I am the mukhia; and have always protected you. Do this for me. Murder Rup Ram. And if you are arrested, I shall spend money and do my utmost to save you." (In his confession, Lachhman said that he tried to get out of this; but eventually agreed and even produced an iron hammer with which to do the deed).

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About twelve o'clock that night, the six men—Radha Kishan, Karan Singh, Sirdar, Lokpal, Kanpal and Lachhman—set forth for Ondhua. Bhajan Lal Patwari, who was friendly with Radha Kishan, had told them that Rup Ram usually slept in front of his house. The six men made a long detour; and met no one on the way. About 1 or 1-30 a. m. they got to where Rup Ram lay. He was about fifteen paces from his door. A mare was tethered near by.

The assassins took up there positions. Karan Singh and Lachhman stood at the door with

their lathis, lest some one came out. Sirdar and Lokpal stood on either side of the bed to prevent Rup Ram running away. Radha Kishan and Kanpal took their positions at the head of the bed.

Radha Kishan then squeezed Rup Ram's throat, while Kanpal struck two or three blows with the hammer on Rup Ram's head, battering it into pulp. They then shook him in the charpoy to see if he was quite dead. He was quite dead.

Then Karan Singh said to Radha Kishan "Here you are. You have won your case. Let us return quietly. No one has seen us or heard us. So they returned to their houses, getting there about 2-00 or 2.15 a. m. and went to sleep.

It was winter; and next morning Lachhman was warming himself at the fire, when the news reached his village. It caused a great commotion. The Patwari came running to Radha Kishan at Akhaipur, and said some one had murdered Rup Ram that night. Radha Kishan said he did not know who had done this.

When the murder was reported at the thana, the darogha and his second officer came

to investigate. Every one from Ondhua and from surrounding villages was called up. Everyone said Rup Ram must have been murdered in consequence of this litigation over Lekhraj's property.

Radha Kishan, Kanpal, Lokpal and Lachhman were also called to Ondhua. The darogha said to Lachhman, "Look here. You were bound over for a year ; and I know you are under the thumb of Radha Kishan mukhia. Find out who has done this ; or I shall send you to the gallows." For three days Lachhman was detained by the police, being allowed to return home only for the nights.

Lachhman was well beaten ; but held his peace. Eventually he said to Radha Kishan "Bhai. They beat me much. I shall now give your names." But Radha Kishan and Karan Singh replied "Don't worry. He shall spend money and save you." They then spoke to the thanedar saying "Take some money and let him go. Why do you persecute him ?" Radha Kishan promised to pay the darogha Rs. 100 and Lachhman promised to pay him another Rs. 25. Then the thanedar said to Lachhman

"Very well, I shall send for you to the mauqa ; but shall let you off."

The thanedar added that he would not take the money direct ; but that it would be sent to him through Sirdar thakur of Rund ka Nagla. He then went off to Sasni. Later Sirdar Singh came to Akhaipur. As Radha Kishan did not have the money, he borrowed Rs. 100 from Karan Singh by executing a ruqqa. Lachhman sent his brother Chhote Lal to the city with his wife's ornaments which were sold there for Rs. 25 to Roshan Lal Saraf. "Chhote Lal lives apart from me" said Lachhman, "and my going to Hathras might have roused suspicion."

Sirdar Singh passed the Rs. 125 on to the thanedar. And the thanedar reported there was no evidence.

Dhandu dhobi planned a dacoity at the house of Bhajan Lal bania of Baburgaon. This man dealt in cloth of which commodity there was a great shortage at the time. For this reason the whole gang over forty strong responded to the summons. They assembled at night in a mango grove some distance from the village ; but near

the hut of Girḍhari brother of Dhandu. It was learnt, that Bhajan Lal himself was at home, though his son had gone to a mela.

The dacoits found Bhajan Lal sleeping outside his door. One of them, Madari bania, shook him and roused him. Another, Moti chhipi, showed him a hatchet and made him hand up the keys, or he would break down the door. The bania took the keys out of his pocket and handed them to Medai brahmin, another dacoit. Several of the gang then entered the house ; though Lachhman and others from Akhai-pur, who had acquaintances in the village, merely stood by, half concealing their faces with dhata.

The dacoits helped themselves to all the cloth they could, as also to some ready-made garments meant both for men and for women. They also found silver jewellery and about Rs. 100 in cash. Documents were found in a round iron box ; some the dacoits destroyed, the rest they took away.

As all this was taken out Bhajan Lal showed signs of rising from his bed. But Parmal thakur of Shahpur caught him by the neck ; and presented his pistol at him. The bania seized the pistol and would not let Parmal pull it away.

Parmal fired, and the shots went down Bhajan Lal's arm. Kumadji, brother of Madai, then gave the bania a sword cut across his back. The blow was a light one; but the man being bare-bodied, it drew blood. The dacoits picked up his clothes and his bedding and added it to their loot. The pistol shot now roused the villagers; and the dacoits, fearing identification, made off.

They returned to the grove where they had assembled. Lachhman was allowed to keep a dhoti and a piece of cloth. The rest of the cloth was handed to Bhagwan Das bania and to Moti chhipi; both dealt in cloth and promised to dispose of it. Dhandu kept some of the silver jewellery; but sold the bulk of it to Khub Lal and Joti Prasad of Akhaipur, who usually purchased dacoited goods. Lachhman's share of the cash came to five or eight rupees. He buried the documents in the grove. Madai of Rajpur and Bhandu of Jalalpur took away the ghee. They advised those who came from greater distances, not to take it; "but," they added, "If you visit us, we shall feed you."

A few days later Medai said to Lachhman "Come, let us get some milk to make khir." So with eight or ten others from Akhaipur, they set forth towards Chintapur. On the way, when far from any village, they met two men from Shahpur carrying two brass vessels containing about a maund of milk. The dacoits demanded the milk from them; and when the men refused, Kanpal aimed his lathi at one of them. On this both dropped the brass vessels and ran. Some of the milk was spilt; but the dacoits drank part of what was left; and took the rest, vessels and all, to Gumanpur. "But", said Lachman in his confession "it proved no good for khir."

Emboldened by earlier successes, fifteen or sixteen of the gang decided to raid the city itself. In the small hours of the morning they assembled in a grove; and after refreshing themselves with pan, tobacco and water, proceeded to a brick kiln in the outskirts of the city. There they learnt that the Sub-Divisional Magistrate, was camping in the Panchgarh (as the Municipal Hall was called.) They debated the advisability of a dacoity that night; but Sirdar and others

declared they would commit one under the very nose of the magistrate.

They proceeded by a circuitous route towards the Panchghar, where they noticed constables and chaukidars on duty. The Panchgarh stood on the edge of the town; a road separated it from the Hospital. Aided by their lathis, the dacoits leapt over the enclosure wall of the hospital; and hid behind the doctor's quarters.

A constable came along with a spear in one hand and a lantern in the other. The light of the lantern shone on the hiding dacoits, and the constables cried out "Here are the chottas." Other constables and chaukidars came along; and the dacoits now rapidly leapt back over the enclosure wall. Outside they found more police waiting for them. Finding themselves surrounded, Kanpal dacoit raised his gun and fired. The police, who carried no fire-arms, dispersed.

The dacoits then decided to leave well alone that night. But in his bravado, Sirdar Singh shouted a challenge to the Deputy Sahib, and fired an aimless shot into the air. Then they all dispersed.

Three days later the gang assembled at Jukhan's grove to dacoit the house of Badri bania. Sirdar, the dacoit-captain declared the man had clothes, jewellery and cash to the value of Rs. 20,000. "But," he added, "We must refrain from dacoity tonight. For the Chaudhri Sahib is at home today ; and this will reflect badly on him. He is going to Meerut in a few days, and I shall advise you later." So the dacoity planned for that night was abandoned.

The local magnate to whom reference was made, lived about a mile away. Several of these dacoits were his riyaya, and he conceived it his duty to protect them. Sirdar was a favourite of his; and he stood surety for several others bound over under Sec. 110 Cr. P. C. That the aforesaid rais was aware of their activities, I shall not say. He certainly was disillusioned a year later, when Sirdar, on being arrested, made a confession to the police, and led me to a lonely spot where he dug up a country-made pistol he had buried there.

IX

A HECOTOMB—PART I

WORKING UP A GANG CASE

It was many years ago, and in a district to the west of the province. The area in question was remote from district headquarters, and the villages there were held chiefly by great landlords anxious to keep their tenants in order. The Circle Inspector, well known for his energy and his ruthlessness, was anxious to make a name for himself by working up a gang case, and indeed succeeded in doing so in later years.

An aheria employed by one of the great landlords made a confession to the police, which he repeated to me, the sub-divisional magistrate. He admitted having been to six dacoities, (of which at least two had never been reported). He named no less than two hundred men who, according to him, had taken part in those dacoities; and said he could identify more whose names he did not know. To me this seemed incredible, but I said nothing at the time.

After I had recorded the confession, the Circle Inspector (who on a previous occasion had earned the sobriquet of Ali Baba by making

forty indiscriminate arrests) asked me if he could carry on (*karawâi karen*); and unsuspectingly I replied he could. I had in mind only the investigation of the dacoity cases. Nothing was farther from my thoughts than wholesale preventive action. Nevertheless the Circle Inspector noted in his diary that I had authorised extensive action under section 110 Cr. P. C.

Thereafter prisoners were daily brought into headquarters. When I had remanded about eighty to jail custody I thought it time to proceed to the spot myself and see what was happening. In the thana the Circle Inspector invited me to accompany him and the aheria approver, and see how things were done. In every village the entire male population was paraded, and any to whom the aheria pointed his accusing finger were arrested. In one instance it turned out to be a blind man; and among those the aheria had named, was one so old and infirm (albeit a man of substance) that he had died in jail almost immediately. This did not, however, retard the investigation.

By this time the number of arrests had reached 123; the supply of fetters in the jail was running out. On my enquiry the Circle Inspector

vouchsafed that he intended to arrest all the two hundred men named by the approver, as well as any he indicated in the manner described above. This would take about another month ; and thereafter at least six months would be required to complete investigation. It was a big case.

Young as I then was I realised that this was going too far ; and I determined to intervene. Five of the arrested men, apart from the aheria, had made confessions to me since my arrival. These I examined ; and I picked out about thirty names which had either been mentioned more than twice, or against whom some other evidence (very slight it was) had been discovered. I asked the Circle Inspector to confine his attention to these thirty, to stop further arrests, and to proceed with the investigation.

I returned to headquarters ; and the Circle Inspector followed hard on my heels. The Superintendent of Police (since long deceased) came to me in hot haste, and declared I was ruining the case. It was in vain to argue the improbability of the aheria remembering two hundred names ; it was in vain to point out that the remedy was proving worse than disease. Nevertheless I respectfully declined to detain two

hundred men in custody for a period of six months.

In the end it was decided to put up the 123 arrested men for identification by witnesses; and I allowed a fortnight for the purpose. The identification proved a complete frost. Of nineteen witnesses, eighteen declared they could identify nobody; the nineteenth identified six or seven men who lived near his village. The Circle Inspector now reported that this fiasco had come about because of a rumour that I was bent on spoiling the case.

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I have always referred to this as one of the only two cases of real police *zulm* I came across during my service as a deputy collector. (The other concerned a communal riot case). But I have been told that methods such as I have described were the usual ones employed in working out gang cases. One cannot but be glad that such proceedings have now ceased to be popular. A gang case is nothing but a glorified bad livelihood case; and that is sufficient condemnation.

When I had been round the region where the 123 arrests had been made, I had found

the countryside in a state of terror. No one knew whose turn was next ; unlike dacoities, which come without warning, the fear of arrest was ever present. The remedy was very definitely worse than the disease. In a report which never saw the light of day, I wrote, "I have no doubt that the people would have preferred the occasional depredations of the dacoit to the organised terror of the legalised kidnapper."

X

A HECATOMB—PART II

I TAKE MATTERS INTO MY OWN HANDS

The Circle Inspector now recommended that the confessing accused and a few others should be prosecuted for dacoity, with the aheria as an approver. And he asked that 110 men should be bound over under Sec. 110 Cr. P. C.

I was now in my mettle, however ; and fortunately the District Magistrate was not of the interfering type. With the prosecutions for dacoity I agreed, though it was my intention to save some more of those who had confessed. As

for the rest I pointed out that the issue of a notice under Sec. 112 Cr. P. C. (an essential preliminary to proceeding under Sec. 110 Cr. P. C.) was at my absolute discretion. I went through the papers and picked out about eighteen men whom I thought fit for such attention.

It was a great day ; and I decided to have something spectacular. Hitherto I had sent remand orders to the jail. Now I directed that the entire 123 accused should attend my court. As may be imagined, neither my court room nor the kutchery havalat could contain them. They camped on a small maidan ; all available police escorted them, the Reserve Inspector in command. Late in the afternoon I gave orders ; and amidst shouts of joy, about a hundred men were set at liberty.

Later I committed for trial those charged with the actual dacoities ; and I made two approvers in each case. Regarding these prosecutions I shall have something interesting to say later. As for the eighteen men under Section 110 Cr. P. C. they were sent to another magistrate to whom the sub-division was transferred. There they hung fire till they expressed their willingness to furnish security.

During the 'investigation', I have been describing 123 men had been arrested ; and of them six (including the aheria) had made confessions. All these six declared that the leader of the gang had been a short stout man whose name nobody knew, but who was addressed by all as Lala. They related how he had once paraded his force and announced the total, perhaps it was forty-eight. Lala had not been among the 123 who had been arrested.

A few weeks later a man suspected to be Lala was arrested. His counsel asked to be admitted to the identification proceedings to be held on him. This was not invariably allowed in those days ; but I agreed. None of the confessing accused identified the man I then called him out, and asked them the direct question whether this was Lala. They all replied in the negative, and declared that Lala was a short stout man like the vakil sahib !

Still later yet another man, Neta Lodh, was arrested, and brought in from a neighbouring district. This time the confessing accused *did* identify him ; and he *was* of the height and build of the vakil sahib. The police now wished to have Neta bound over under Sec. 110 Cr. P. C. for

three years. But I insisted on committing him for trial to the Court of Session. In doing so I referred to the legal gentleman as Ex. X; and as such he had to appear in the Court of Session.

I was most reluctant that any of the confessing accused should be trapped by their own confessions. But I could not save them all. I made two approvers in each of the cases sent up for trial, remarking that they could corroborate each other. I remember in one case there were two approvers and only one accused. Possibly this was carrying things too far; but the underlying principle was sound.

The Sessions Judge (who subsequently rose to the Bench of the High Court, and was one of the ablest Judges I have met) remarked that two approvers could not corroborate each other, unless it had been impossible for them to communicate with each other before they made their first confessions. This certainly is reasonable; but I would scarcely accept it as an invariable principle of law. And in any case it is better to save a confessing accused in this manner, than to spread the notion that to make

a confession is only to place one's head in a noose.

At the risk of appearing egotistic let me conclude by saying that the same Sessions Judge complimented me on "having brought a dangerous criminal to book by my careful personal attention to the investigation." And the District Magistrate similarly remarked on the excellent cooperation I had offered to the police.

XI

A BORDER DISPUTE

It was in 1923 in the borderland between two Oudh districts. Dacoities were numerous, and all attempts to check them had been baffled. In the police circle on my side of the border there was an average of a dacoity every month. In this circle was a village named Sahara, which was full of bad characters. There was a similar village on the other side ; but I forget the name.

There was much recrimination between the two districts. Each complained that the thanedar across the way had pledged immunity to his bad characters, provided they left his circle alone, and committed their depredations elsewhere. There apparently was some truth in this. For an instantaneous improvement took place when the Station Officers were changed.

The new officer on my side was Sub-Inspector Sheo Sewak Singh ; and he did the most marvellous police work I have known. Within a fortnight of his arrival, a man was arrested ; and made a confession. (If I remember aright he spoke of how the gang once assembled at a village bazar, and saw me visit it on an elephant). This led to other arrests and discoveries ; and all dacoity ceased. Those against whom evidence was weak were bound over under Sec. 110 Cr. P. C. for a period of three years each. The others were sentenced to long terms for dacoity.

There was an unfortunate sequel to this in a neighbouring circle. Finding evidence of identification had been accepted in the cases just mentioned, the station officer surpassed himself in securing evidence of this kind. Witnesses were instructed to identify a certain number at the parade, whether right or wrong.

The laws of chance made it certain that some of those indicated should be among those sent up by the thana. But the unreliability of their identification was quickly discovered by a consideration of the number of mistakes they had made; and there was no good confession to knit this evidence together.

XII

FOR LACK OF ARMS

It happened in my early days at a village about two miles from a railway station. A well-to-do zamindar and mahajan named Mangal Sen, repeatedly received threatening messages. He applied more than once for a licence for a gun; but in vain.

At last one night the dacoits arrived. The females of the household were either allowed to get away secretly or were hidden in a back-room. Brave Mangal Sen and his three sons climbed to the upper storey of the house; and assailed the dacoits with missiles they had collected there in anticipation of trouble. But the dacoits held

firearms. One of the sons was shot dead. Another with Mangal Sen, was mortally wounded. The third son was permanently disabled. Then the dacoits burst open the door ; and plundered the house, an iron safe alone resisting their efforts.

I reached the place some hours later in company with the Superintendent of Police. The second son had already died. The father succumbed to his injuries shortly after our arrival. Three deaths in all, another permanently maimed, much property lost. It never proved possible to prosecute anyone for this dacoity. Years later some mention of the outrage was made by an approver in a gang case.

XIII

A MISCARRIAGE OF JUSTICE

A wealthy Thakurain widow lived in a village about two miles from the railway line. The District Magistrate confiscated her arms for no better reason than that she was supposed to have an illicit intimacy with her manager. This endeavour to enforce morality led to the most disastrous consequences.

The Thakurain appealed for the restoration of her licences ; but in vain. The news spread far and wide that the wealth in her garhi was now unguarded. One night a large body of dacoits invaded her residence, maltreated her and her servants ; and escaped with booty worth over twenty thousand rupees.

The gang was discovered owing to a split in their own camp. One of the dacoits, discontent with the share of the loot allotted to him, complained to the leader. "I too have children to support," he said. But he got no satisfaction ; and so gave the whole story to the police.

Many of the dacoits had come by rail from distant places, and I had to accompany the man (who was, of course, hand-cuffed) on a tour from the nearest railway station to the Thakurain's garhi to verify his statement.

Numerous arrests had already been made ; and identifications had been conducted in the usual haphazard manner. In many cases the proportion of accused to the entire parade was only one to three ; and the witnesses also made numerous mistakes.

Over two dozen men were chalaned. I discredited at least half the identifications ; and

discharged a large number of the accused. The District Magistrate, on an application by the police, directed that all except one should be committed to the Court of Session. The Judge (who had just been promoted to that rank from Civil Judge) blindly accepted the evidence of identification; even that of a station master who professed to have recognised many people who had alighted from the train that night.

But even after this, crime did not abate; for the aim of all these proceedings had not been to find the true culprits, but merely to register convictions. Of the state of affairs in this district at that time, I may speak in more general terms in another place.

XIV

HONOUR AMONGST THIEVES

There is such a thing as honour among thieves; and though I never over-emphasised the dangers of a confession, I have known of dacoits refusing to make one. I remember a remarkable case in Hardpi! A murder had been committed

in the course of a dacoity ; but the villagers had also rendered a good account of themselves. One of the dacoits had been felled and captured.

He made a confession to the police ; but declined to do so when I interviewed him in the jail. I transgressed my legal obligations by pointing out that his only chance of escape from the gallows lay in making himself an approver. Still he persisted that he knew nothing of a dacoity ; and that the villagers had unnecessarily belaboured and arrested him, an innocent way-farer.

When my back was turned he told some one that he realised his life was at stake ; but that that was no reason why he should send others to their death. One could not but admire the doomed man's loyalty to his companions.

XV

A TROUBLESOME REGIMENT

I was posted to a hill station where a British regiment was quartered. There were some roughs in it ; and they soon gave the troops

a bad name. I forget most details ; but one day they made a running raid into the shops along the main road in the Lalkurti Bazar. No one was able to identify them ; for in uniform all soldiers looked alike.

Some days later, they drank beer from early morning till late in the evening. After the canteen closed for the night, they assaulted the chaukidar, broke open the door, and took away some boxes of cigarettes. The military authorities now put matters into the hands of the police ; and the Superintendent of Police himself made the investigation.

Six men were prosecuted for dacoity. I regret to say I discharged one whom the officers considered the worst of the lot. The Sessions Judge watered down the charges against the other five. The taking away of the cigarettes, he remarked, was only a boyish prank ; but the assault on the chaukidar (who was badly wounded) was serious. In the end he awarded them each a few months rigorous imprisonment.

XVI

A TECHNICAL DACOITY

It was in 1921. The aftermath of the First World War had not subsided; matters were boiling up for the political upheaval which followed a few months later. Among other causes of discontent, cloth was scarce and expensive.

It was in a village market in Gonda district. Some cloth shops were open there. The visitors eyed them longingly. Suddenly one of them, unable to resist temptation any longer, shouted

“Mahatma Gandhi ki jai ;

“Kapra leo le”.

And saying this he rushed into one of the stores. The mob instinct seized several others ; and quickly they helped themselves to the cloth.

I was camping some miles away ; and rode to the place at once. I reached there after dusk ; and found the police already there. Subsequently some men were prosecuted before me. I convicted a few ; but was not too hard on them.

PART IV

BREACH OF TRUST

I

BREACH OF TRUST

It is breach of trust to use money or property in a manner or for a purpose different to that for which it was received. It is civil or criminal according as the motive was honest or dishonest. In English law the latter is known as embezzlement; and I do not know why the Indian Penal Code did not adopt that term.

The full definition will be found in Sec. 405 I. P. C.; and illustrations (c) and (d) bring out the distinction between criminal and civil breach of trust. These may be expressed as follows:

D from Delhi remits money to C his agent at Calcutta to invest in Government paper. If C dishonestly employs the money in his own business, he is guilty of criminal breach of trust. Suppose however he invests it in Bank shares, honestly thinking this will be more to D's advantage; in

that case, even if D suffers loss thereby, C cannot be prosecuted criminally^o. D may however bring a civil action for damages against him, even if he has suffered no loss.

The distinction between civil and criminal breach of trust is often very fine. In many cases those charged with it could escape if they pleaded a mistake or honesty of purpose. It is when they abscond or deny receipt of the money that they give conclusive proof of their guilty intention.

I have often wondered why criminal breach of trust, at least of the simpler sort is not made compoundable. Frequently such charges turn but mere matters for settlement of accounts ; and it is better to let the parties come to terms than to insist on their fighting out the matter

There are four penal sections in the Indian Penal Code dealing with criminal breach of trust :—

406—Ordinary

407—By a carrier wharfinger or warehouse keeper.

408—By a clerk or servant.

409—By a public servant entrusted with public money, or by a banker, attorney or agent in respect of money received in the course of his business.

In several police stations I have seen on the list of absconders names of postmen who disappeared with insured letters and money orders.

II

AN INGENIOUS EXPLANATION

It is about thirty years ago that the Raja of M. died. His son being a minor, the estate was taken over by the Court of Wards. When the accounts of the Zilledar of an outlying circle were checked it was found that he had not accounted for about Rs. 2,000. Being unable to make this good, he was charged before me for criminal breach of trust.

I remember how it amused me when I examined the account to find items of expenditure on tips etc., when the Collector had camped in the neighbourhood; but presently was less amused

to find items relating to my own tour as well. But that is only by the way. •

The Zilledar drew a salary of only Rs. 3 a month. His explanation for the shortage was that fifteen years previously the old Raja had raised his salary to Rs. 15 and that he had been deducting the extra Rs. 12/- every month ever since. Some oral evidence was produced to prove this; but was, as can be imagined, discredited.

Considering the total amount embezzled I committed the case to the Court of Session. But the Judge was lenient, rightly remarking that to pay a man starvation wages was to drive him to dishonesty. It is this false economy, and a lack of proper supervision which is responsible for most embezzlements in big estates.

III

A CLEVER CLERK

The most intricate and the most interesting case of embezzlement which I ever had to try was against Asghar Ali, the ahlmad mukadmat (or legal clerk) of a taluqdari estate. He was

aged sixty years, of stately deportment and venerable appearance. For eighteen years he had served the estate ; and one would never have suspected that before that (when in the service of another estate) he had already once been convicted and sentenced for criminal breach of trust.

On two occasions money was advanced to him for payment to a counsel engaged by the taluqdari estate in an important civil suit—Rs. 500/- on one occasion and Rs. 460/- in another. As luck would have it, the counsel was drawn into the maelstrom of political agitation and was imprisoned before he could be paid. When released he made a move to realise his dues ; and Asghar Ali was hard put for an explanation.

He never, however, asserted that he had paid the counsel. He stated that he had spent the money on other expenses of estate litigation. Interminable explanations and correspondence followed ; and finally the taluqdar dispensed with his services, though chiefly because he was taking a leading part in the Khilafat movement of which that magnate disapproved. Asghar Ali then pleaded that he could not, without seeing all the records, explain how the money had been spent.

After giving the man considerable time to explain, the matter was handed over to the police, and the case was sent to me for trial. Asghar Ali maintained the position already detailed. He had before this faced another charge of embezzlement brought against him by the estate; but had been acquitted by the Chief Court on the ground that all papers necessary for him to give an explanation had not been shown to him.

The system of accounts maintained by the estate was astonishingly defective. No proper ledger was maintained whereby one could tell at a glance how any advance had been expended. It cost infinite labour to extract the various items from the records; and only then was it clear that no expenditure of this Rs. 960/ appeared in the accounts.

Asghar Ali still maintained however that he must have rendered accounts, though they may not have been incorporated in the registers of the estate treasury. Whole ekka-loads of records were called up for his benefit; but nothing to his credit could be discovered. Finally I chanced on a report made by him, about two years previously in which he mentioned having paid this money to the lawyer. Even that report was guardedly

worded ; but a consideration of connected papers left no doubt as to its meaning.

The case against Asghat Ali could now be summed up as follows. He had been advanced Rs. 960/ for payment to a lawyer. He never paid him ; but sent in a report saying he had done so. A charge of embezzlement was clearly established.

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My judgment was described by my appellate Judge as " of portentous length and industry ;" and reading it through after all these years, I marvel at the trouble I took over it " I confess " I wrote, " to a secret admiration I have for the accused. I have not met his equal for artfulness and resource. The manner in which he has conducted his defence can only be compared to a masterly retreat by a skilful general. He has retired from cover to cover, and employed every stratagem to baffle and outmanoeuvre the prosecution. And even now he refuses to acknowledge defeat."

There were two charges against him, and in all I awarded him two years rigorous imprisonment and a fine of two thousand rupees. This

was the heaviest fine I have ever inflicted. The Judge upheld my order. The Chief Court allowed the accused another chance in the Record Room of the estate ; and then did likewise.

It is a strange fact that Asghar Ali bore no ill-will towards me, even after I had convicted him. While on bail pending appeal and revision he called on me more than once, thanked me for the courtesy I had always shown him, and even asked my advice as to how he should proceed. During a brief spell in prison he had asked to be allowed to keep his scriptures with him. But after his revision was rejected, he failed for a while to put in an appearance. Rumour went that he had proceeded on a pilgrimage to Mecca. (Literally a case of *nao sao chube kha kar, billi baj ko gai.*) But eventually he surrendered himself.

IV

IN THE POST OFFICE

When a Post Office sends a money order, the actual cash is not sent to the destination. Only the form is sent there ; and later, adjustments are

made by the Accountant General. The remitter receives two receipts, first from the Post Office and then from the payee. A duplicate in carbon is kept of the former.

A clever embezzlement was committed by a postal clerk at Aligarh, who was entrusted with money order work. He did everything regularly; but when drawing up receipts for the remitter he did not simultaneously prepare a carbon copy of it. Later, he placed a piece of carbon paper on the counterfoil, and wrote out the 'copy' for a smaller sum than that actually received.

This was smart work. The remitter received a correct receipt. The payee received the full amount of the money order. But Government was losing daily to the clerk. This could not go on for ever, however; and the Audit Office detected the fraud. One day an official from the office of the Accountant General paid a sudden visit to the Post Office and seized the papers.

The clerk was prosecuted. The case was not before me, so I do not know his defence. But in the end he was convicted.

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It was in a military office at the end of the last War. Large numbers of money orders were

sent to various people. But it often happened that the addresses were incorrect; and several were returned unpaid. The military official responsible for these matters accepted the refunded money; but placed it in his pocket. The money order coupon returned with the money was destroyed.

There was no chance of detection unless someone expecting money applied for payment. This happened after a considerable time, for discharged soldiers were hazy as to their dues. There is one moral to be drawn from this. Those who check accounts of money remitted through the Post Office should insist on seeing not only the postal receipt but the payee's receipt as well.

V

IN COURTS AND OFFICES

A retired District and Sessions Judge took up honorary work as a first class magistrate. He worked at his residence a long way from district headquarters. His clerk was a clever official, as events showed a little too clever. But the court trusted him implicitly.

It was in my very early days ; and I was in charge of the Collectorate Record Room. I noticed that no files had been consigned by this court for several months. Repeated reminders went unheeded. On a personal letter being sent to the magistrate, he replied that he himself had been shown a receipt granted for files by an official of the Record Room.

This started further enquiries. One day the police pounced on the clerk's house. There they found numerous files. But court-fee stamps were almost entirely missing from them. Investigation showed that the clerk had been accepting cash for affixing such stamps to the papers, but had kept the money himself.

This was not all. The court had not bothered about the fine register, which was his personal responsibility. The clerk had maintained this ; and had never sent any of the fine money to the treasury. He was prosecuted and convicted.

Regarding fines, I have heard of such complaints elsewhere also. The moral is that a court should itself make all entries in the Fine Register.

Contingent registers should be checked along with vouchers, before contingent bills are signed. Immediately after check, the vouchers should be cancelled. This is the practice in all Government offices.

In a certain hill district the Settlement Officer, while checking carefully, had not insisted on the cancellation of vouchers in his presence. The result was that some were passed through the accounts more than once.

When this was discovered the clerk concerned disappeared. It was rumoured that he had committed suicide by plunging into a river. But there was no definite proof of this and probably he is still recorded as an absconder.

VI

IN THE ARMY

A Sergeant Instructor of Volunteers, a man I liked very well, had to pay periodical visits to an outlying station to put people through a musketry course. A marker was employed there; and it was the duty of the Sergeant Instructor to pay him his monthly salary.

One day the marker sent a petition direct to higher authority, asking that his salary be raised from twelve to fifteen rupees a month. The matter needed enquiry ; for his sanctioned salary already was fifteen rupees a month, and that should have been paid him by the Sergeant Instructor.

The Sergeant Instructor proceeded immediately to the out-station, and the marker then explained that his figures were wrong ! He had been receiving fifteen a month ; what he wanted was eighteen !

Here is a story of somewhat different description. The hero was a District Officer, who loved to place others in awkward positions. He belonged to a Volunteer Cavalry Regiment ; and was entitled to twenty rupees a month as horse allowance.

The Volunteer Office sent him Rs. 19-12-0 by money order, the remaining four annas being deducted for postal commission. They explained this on the coupon, and asked the District Officer to send a receipt for the full twenty rupees.

The District Officer accepted the Rs. 19-12-0 and sent a receipt for that sum only. "I have never yet given a false receipt", he said "and I do not intend to begin now." It was in vain to argue that audit difficulties would arise. I do not know how the matter ended.

VII

NOT A FOOL-PROOF CASE

The accused Kali Charan was a public servant, an Inspector in the Rural Development Department. He had been advanced Rs. 750 for making payments for works of public utility in distant villages. He rendered an account for Rs. 602 supported by eight receipts. One of these was for Rs. 72 and related to village Badhan. Later he put in another receipt. This purported to be for Rs. 100 paid in village Khane. His total expenditure thus came to Rs. 702.

The office clerk and I quickly discovered there was something suspicious about these receipts from Badhan and Khane. The signatures on the former did not correspond with those on the

application for the money ; besides there were other discrepancies. The latter bore a date anterior to that on Kali Charan's account ; and should thus have been included in that account.

It was on the hills. The villages lay in opposite directions and it took days to reach them. But I sent urgent messengers to local officers to verify from the villagers whether these sums had actually been paid to them. Replies came that the money had not reached them.

But even before this Kali Charan had come to know that he had been caught. He made a virtual confession to me in writing, and begged for forgiveness. He was suspended by telegram. A search of his house produced nothing. He was prosecuted ; and the case was committed to the Court of Session.

It went before a Judge recently promoted from Civil Judge. He held the confession to me to be inadmissible in evidence ; and accepted some absurd explanations for the other evidence against the man. I was surprised at the acquittal ; but could do nothing, especially as I had left the district.

"I had thought the case a fool-proof one" I remarked. "But apparently it was not."

PART V

CHEATING

I

CHEATING

Cheating (Sec. 415) means deceiving a person into doing or omitting to do what he otherwise would not do or omit to do, provided such act or omission causes harm to the person deceived in mind, body, reputation or property.

Illustration (g) to section 415 may be quoted.

“ A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant, which he does not intend to deliver; and thereby induces Z to advance money upon the faith of such delivery. A cheats.

“ But if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”

To issue a cheque in payment of due, knowing it will be dishonoured, is cheating ; but not if the drawer is merely mistaken as to the balance in his account.

To travel by rail without a ticket is a simple offence under the Railway Act. But to aver that one holds a pass or ticket when he really does not, would bring the case within the category of cheating. So would an attempt to palm off a used ticket, or the return half of a ticket issued to another at concession rates.

Section 417 deals with simple cheating ; Section 419 with cheating by personation.

Section 420 comes in when, in consequence of being deceived, the victim surrenders property or executes a valuable security.

All forms of cheating are compoundable with the permission of the Court.

Strangely enough property secured through cheating is not ' stolen property ' within the meaning of the Indian Penal Code.

II

SOME IMPECUNIOUS PEOPLE

Captain P. . . owed a bill at a general goods shop in a hill cantonment. When about to leave the station on transfer he came along and enquired how much it was. On being told it was about Rs. 80, he remarked that he would pay by cheque on a bank at Bombay. But, he added, he was in need of ready money. Would the firm accept a cheque for Rs. 100, receipt the bill, and let him have the balance of Rs. 20? Glad to be paid at all, the firm agreed. But when the cheque was sent to Bombay, it was returned with the endorsement 'Refer to Drawer,' which is a way of saying there was insufficient balance or no balance in the officer's account.

This was a clear case of cheating, but the officer might have escaped by saying he was unaware of how low his account had run. Moreover a criminal charge against a military officer in a Cantonment would have brought on the firm the displeasure of the military authorities—not a little to reckon on for one whose livelihood depends on daily dealings with them. So the firm, acting on the advice of its counsel,

merely reported the case to higher military authorities, and filed a civil suit for Rs. 100 before me.

In the same Cantonment was a furrier. The wife of a Military Officer admired an expensive rug. The merchant let her have it, and said payment could be made when convenient. Months went by, and then the officer received orders of transfer. When the merchant went for payment, he was plainly told that he (the officer) had not the money to pay; and the merchant could take back the rug.

It would be difficult to bring this within the purview of the criminal law, though a civil action would have been possible.

III

A LEGAL QUIBBLE

A passenger purchasing a ticket at a railway station put down eight annas more than was

required. The ticket clerk had not asked for this excess, but quietly retained it. A few minutes later the passenger discovered his mistake, and returned to demand the excess he had paid. The ticket clerk told him the fare had been raised by eight annas. The passenger was not satisfied, and complained to the police. The police promptly pounced on the ticket clerk; and discovered he had exactly eight annas more than he should have had.

The ticket clerk was prosecuted for cheating under Sec. 420 I.P.C.; but the magistrate acquitted him. There had been complaints like this before; and Government presented an appeal against the acquittal. But the High Court dismissed the appeal, remarking that even on the facts alleged, an offence under Sec. 420 could not lie.

The question was then studied. In the first place the clerk was guilty of misappropriating the money (Sec. 403). In the second place he was guilty of cheating under Sec. 417 when he told the passenger that the fare had been raised. For a charge under Sec. 420 it was necessary that the excess should have been paid, *in consequence* of deception practised by the ticket clerk.

At the departmental examination at which I sat we were actually asked a question about this case. It was an unfair question for beginners. I must have been one of the few who answered it correctly; for the case had been tried by an uncle of mine, and I had been interested in it.

IV

CHEATING THROUGH INSURED LETTERS.

A man at Allahabad, posing as a merchant, sent an order to a firm at Lahore. When the goods arrived he despatched an insured envelope to the firm. This was supposed to contain currency notes in payment of the bill. It reached Lahore safely; and, unsuspecting, the firm accepted it. But when the envelope was opened, it was found to contain nothing but waste paper.

The man was prosecuted for cheating under Sec. 420 I.P.C. He insisted he had actually enclosed currency notes. Either there had been a substitution in transit; or the people at Lahore were not telling the truth.

But the envelope had been received with seals intact; and its weight on arrival had been the same as on despatch. (The post office uses delicate scales for insured letters).

Furthermore the people at Lahore had taken the precaution of opening the envelope in presence of witnesses; and there was no need to doubt their bonafides. The accused was convicted.

This was one of the earliest cases of cheating I tried. It was about 1915. Since then I have had one or two similar cases.

V

A BOGUS VACCINATOR.

In days gone by, and even now in many places, a vaccinator is regarded with terror by villagers. Though there is no law making vaccination compulsory in rural areas, the executive staff is expected to assist in having this done. They strive to give the impression that refusal to be vaccinated can be punished.

An old cheat visited my sub-division in the middle 'twenties; and told the villagers he was a vaccinator. He levied blackmail from several people, before they discovered he was not a vaccinator at all. When put up before me, he gave a lengthy explanation denying the charge. He had been falsely implicated by the darogha, he said, because he had refused to submit to an unnatural act. This did not go down, however, and I awarded him twice the sentence I otherwise would have.

VI

A MATTER WITH BOTH CIVIL & CRIMINAL ASPECTS.

Zamindars have special rights in their sir land. If they sell their property they automatically become tenants with exproprietary rights on their sir land. No agreement to relinquish such rights can be enforced by the courts, unless executed six months after a sale. This is made clearer than ever by sections 27 & 82 of the present U. P. Tenancy Act (XVII of 1939).

An exproprietary tenancy detracts considerably from the value of zamindari; every purchaser has his eyes open about it. And yet I know many instances in Ghazipur where purchasers allowed themselves to be deceived by promises of subsequent relinquishment. In the end I used to say that all sins regarding sir were immune from the law (*sab guna maf*).

On one occasion many years ago, the vendor actually accepted a separate consideration for his promise to relinquish; and this was noted in the deed of sale. Yet later he refused to surrender the sir. He could not be compelled to vacate; but he certainly had transgressed the criminal law by accepting money on false promises.

The purchaser charged him before me. All manner of attempts were made to side-track the issue; but I kept apart the civil and criminal aspects of the law; and convicted the vendor of cheating under Sec. 420 I.P.C. On appeal he twisted what he had said to me, and said he would leave the land; and consequently was acquitted. I cannot say I agreed with the Judge.

It is all very well to insist that a zamindar should not be allowed to force himself into destitution. But this does not mean that he should be allowed to make money by false promises.

VII

HOW A BRAHMAN MARRIED A CHAMAR.

A middle-aged Brahman, whom we shall call Ram Baran, desired to marry a young wife. He resided within police circle Chiraiyakot in Azamgarh district. An acquaintance, whom we shall call Sheo Karan, said he had associations in Phulpur tahsil of Allahabad district, and would try and arrange a match. Ram Baran promised to pay a hundred rupees for his expenses and for the bride.

A few weeks later Sheo Karan asked Ram Baran to accompany him to Phulpur as everything had been arranged. He had merely to bring the girl away. They proceeded to Phulpur; and at the railway station Sheo Karan introduced Ram Baran to the father of the bride and to some relations. The girl, who was little more than a child,

was also there. Ram Baran was greatly taken with her; and in his elation paid Rs. 150 instead of Rs. 100 as promised.

Ram Baran brought the girl home to Chiraiyakot. All this happened when I had only three or four years service; and I cannot recall whether or not a ceremony of marriage was gone through; but if it was, it was at Chiraiyakot, and not at the home of the bride's father. A month went by, and then some people from Phulpur visited Ram Baran's village. And then it transpired that the young girl was not a Brahmin but a Chamar!

A case of cheating under Sec. 420 I.P.C. followed. I convicted Sheo Karan. He had two associates who absconded. Later they were tried by the Joint Magistrate who acquitted them. I did not agree with his judgment.

What struck me in this case was that though the girl had lived a month with Ram Baran, he had not bothered to ask her anything about her family and her antecedents. He did not know even her name. Companionship is apparently not required of a wife in some families.

Later in my service I knew of a Brahmin taluqdar, who fancying a woman of lower caste, took her into his keeping. He could not marry her, of course; but they lived as man and wife. He drew the line at one point however. He refused to eat what she had cooked or touched; in fact, would not even dine in her company!

VIII

CHEATING ON THE WAYSIDE.

Some women were walking down the Grand Trunk Road in Mainpuri district. Four men overtook them and passed on. Presently they 'missed' some gold ornaments they had been carrying. They retraced their steps, and asked the woman if they had noticed these ornaments on the road. The woman had not; but in a few minutes the four men pretended to pick them up from the dust.

They begged of the women not to mention the fact to anyone; and even offered some of the ornaments in exchange for some jewellery they

were wearing. The women agreed; but very soon discovered that the gold was only gilt.

It was good work on the part of the police to have arrested these four men almost immediately after. Other gilt articles were also found on them.

Enquiry showed they were *babelias* from Shah-jahanpur district, who had been away from home for some time. Apparently they were making a business of this form of cheating. All four were convicted under Sec. 420 I.P.C.

IX

CHEATING BY LOTTERY.

An Anglo Indian started a business in Sitapur. He bore the same name as the Governor of the time, though in no way connected with him. The business was nothing but a lottery, though he gave it another name. He appointed an agent; and with his help sold a large number of tickets. A date was announced when the lottery would be drawn; but when it approached it was postponed.

After this, had happened on more than one occasion, it became obvious that the gentleman was living on the proceeds, and had no intention of ever drawing the lottery. To prove this would however have been difficult. On the other hand, though a public lottery is illegal (Sec. 294A I.P.C.) no one can, without the sanction of Government, be prosecuted for running one. (Sec. 196 Cr.P.C.)

Such sanction was secured, however, and the case came to me. I tried it summarily. I awarded the Anglo-Indian three months, and his agent a fine of fifty rupees. I could, of course, have also fined the main culprit, and compensated those he had swindled. But such a fine could never have been realised; and moreover all who had purchased tickets had really abetted the offence.

X

CANCELLED CURRENCY NOTES.

B. Deokinandan Prasad was a wealthy merchant; and had been appointed an Honorary

Magistrate. He had a clerk named Sridhar. These are the principal figures in this story.

One Dipa Teli advanced some money to Rahmat-ullah Kunjra, who let him have the halves of eight ten-rupees notes as security. When Rahmat-ullah did not pay, Dipa sued him. The matter was referred to arbitration by B. Deokinandan Prasad. He held that Rs. 110 was due. Rahmat-ullah paid this up immediately; and a remark was endorsed on the file that the half notes had been returned to him.

As a matter of fact, however, they were purloined by Sridhar, who took them to his own house. From there, unknown to his master, he wrote to the Currency Offices at Calcutta, Lucknow, and Bombay, according to the circles to which the notes belonged. He stated he had received these notes in the course of rent collection; and that the other halves had accidentally been burnt. He asked for their renewal.

The heading of the letters showed they had all been despatched from Sridhar's own house, which was in a mohalla away from where his master resided. But he purported to write on behalf of Deokinandan. Instead, however, of signing the letters himself, Sridhar got another

servant named Sheo Karan to sign for Deokinandan in the difficult Muria script. Below this he transcribed the name of Deokinandan Prasad in English.

The Currency Officer soon detected a fraud. The half notes sent by Sridhar along with 69 others, had been stolen from the Chandernagore Post Office eight years previously. The other halves were lying in the Cancelled Currency Note Vault at Calcutta. The Post Master General had already been refunded the value of all the notes.

The matter was made over to the Criminal Investigation Department. Both Deokinandan Prasad and Sridhar were put up before me on charges of cheating under Sec. 420 I.P.C. No enquiry seems to have been made as to how Rahmat-ullah had got hold of these half notes. Instead, he was examined as a witness for the prosecution. The counsel for the defence likened him to a God on Olympus watching the struggles of the heroes on the plains of Troy.

After the prosecution had closed its case I confronted Deokinandan with the signature on the application for renewal of the notes. It was,

as already stated, in the difficult Muria script, and no one had troubled to examine it closely. No sooner Deokinandan saw it, he remarked that it ran "Deokinandan ba kalm Sheo Karan!" (Deokinandan written by Sheo Karan).

The case collapsed immediately. I discharged Deokinandan; but framed charges against Sridhar, and eventually imposed a draconic sentence on him. But the police were upset at Deokinandan's discharge. "He himself could have written his signature, though adding the words 'baklam Sheo Karan.' The court was not a handwriting expert."

On this incredible argument the District Magistrate ordered farther enquiry into the case against Deokinandan; but the High Court set aside his order. All this had gone on while I was still trying the case against Sridhar, and put me in a peculiar position. I learnt one lesson from all this. In important cases, if you decide to discharge one of several accused, do not do so till you have completed the cases against the others.

XI

A LAWYER IN TROUBLE.

A gentleman, whom I shall call the Mir Sahib, was a mukhtar of about 37 years practice at the District Bar. He was also a Municipal Commissioner. He started a Trading Company with himself as Secretary; and sold shares worth Rs. 1000 to a brother practitioner, whom I shall call the Hafizji. For three years the Company paid no dividends; and then closed its doors.

The Hafizji would have gone to law about this, but deemed it wisest to come to terms with the Mir Sahib. He sold him the shares; and instead of insisting on cash, accepted a bond, payment of which was guaranteed by hypothication of the Mir Sahib's house in mohalla Chahl Satun. The bond specifically stated that there were no other encumbrances on this house.

Receiving no payment for three years, the Hafizji sued the Mir Sahib on foot of this bond. The suit was decreed, and an application for execution was put in. The house in Chahl Sa un was attached.

Before it could be auctioned the Hafizji heard there was a prior encumbrance on it. A search

in the local registration office revealed nothing; but enquiries at Patna gave some details. A farther search then unearthed an old document whereby the Mir Sahib had mortgaged a house many years previously for Rs. 1750.

The boundaries of this house were shown almost exactly as those of the house hypothecated to the Hafizji. But it was described as situated in Moghalpura, a mohalla adjacent to Chah Satun, and sometimes confounded with it. It was the incorrect description which previously had deceived the Hafizji in the registration office.

The Hafizji's eyes were now thoroughly opened. On 30th August he instituted a criminal case under Sec. 420 I.P.C. against the Mir Sahib. The latter did not deny the identity of the two houses; but took up the line that the old mortgage had been redeemed long ago.

The old deed of mortgage had been executed in favour of two ladies, Mst. Ahmadi Bibi and Mst. Zinat Bibi, both of whom were believed to be resident in Patna. Complainant (that is Hafizji) made vain attempts to secure their attendance.

After a time he learnt that the latter had died the previous June, while living with a relation named Tajammul Husain. Tajammul Husain was a resident of a village in the district; and had not been acquainted previously with the Hafizji. He was summoned to court on 2nd October, and gave the following story.

Mst. Zinat Bibi had indeed died in his house the preceding June. He had before that seen the old deed of mortgage with her; and had in fact been with it to the Mir Sahib to claim interest due, though to no purpose. After her death he had kept the paper; and had on 22nd September been again to the Mir Sahib with it. After he left that gentleman's house, he missed the document. He lodged a report about it immediately at the Kotwali, and offered a reward for its recovery.

This report was sent for and duly proved in court. There was nothing whatever to suggest collusion between Tajammul Husain and the complainant (that is the Hafizji).

The Mir Sahib (now the accused) was questioned immediately after this evidence. He insisted that the mortgage had been redeemed long ago, and that the deed, duly acquitted, was in his

possession. This was on 2nd October. He had preserved silence about this so far; and even now did not produce the document without considerable hesitation.

On the 18th October certain other members of the Bar, anxious to avert a scandal, took him to the Hafizji's house; and asked the latter to pardon him. The Mir Sahib however neither offered to pay up the Rs. 1000 due from him, nor did he aver that the redeemed deed of mortgage was in his possession.

This was strange behaviour; for the same afternoon the Mir Sahib produced in court the supposedly redeemed deed of mortgage. It bore an endorsement that the mortgage had been redeemed years ago. This endorsement was attested by the elliptical signets of both Mst. Ahmadi Bibi and Mst. Zinat Bibi.

At a late stage of the case the Mir Sahib examined a lady said to be Mst. Ahmadi Bibi. This was one of the very few occasions I have examined a witness from behind a purdah. The Mir Sahib vouched for her identity. She declared that the old mortgage actually had been redeemed. But

she also admitted a relationship with the Mir Sahib.

The report of loss at the Kotwali was, however, a formidable piece of evidence. If the deed had actually been redeemed, how had Mst. Ahmadi Bibi retained it till the time of her death. Accused's obstinate refusal for so long to produce a document, which could have cleared him at once, was also suspicious. Finally an examination of the endorsement of acquittance clinched the question, and proved it a forgery.

This acquittance and Mst. Ahmadi's seal were in one kind of ink; Mst. Zinat's seal in another. This was strange if both had witnessed the endorsement. That Mst. Ahmadi's seal was genuine could be assumed from the fact that she now supported the Mir Sahib. But Mst. Zinat's seal was decidedly suspicious. Around it were faint marks of two concentric ellipses. The paper on which these had been drawn, had been scrapped gently and then rubbed down.

The truth was that these faint ellipses were the remains of a forgery. The artist, who did not

have the seal with him, knew it was elliptical in shape and had a double edge; but he had misconceived its size and made it larger than it should have been. When too late the true seal was found. Then an imperfect attempt was made to obliterate the forgery, after which the true seal was impressed on the paper.

It was clear that the Mir Sahib had falsely declared his house to be free of encumbrance; and had thereby persuaded the Hafizji to accept a bond from him as the price of shares worth Rs. 1000. He was guilty under Sec. 420 I.P.C. It was with regret I convicted him. I awarded him one month's imprisonment and a fine of Rs. 500. The order was maintained both by the Sessions Judge and by the High Court.

I believe the accused was later disbarred. But, even while in prison, he continued a member of the Municipal Board; for the Municipal Act disqualifies only those sentenced to more than six month's imprisonment.

XII

FRAUDULENT DISPOSALS OF PROPERTY

Fraudulent Deeds & Disposals of Property are dealt with from Section 421 to 424 I.P.C.

Section 424 is the only one of these clauses which I have known to be used. It penalises anyone who fraudulently or dishonestly

- (a) conceals or removes any property of himself or any other person or
- (b) releases any demand or claim to which he is entitled.

Section 423 penalises the making of false statements as to the consideration for a sale, mortgage or other disposal of property. This is often done when the contracting parties fear a claim for pre-emption. But I have never known a prosecution for this offence.

A man cannot steal his own property. But here is a tricky case; and though such instances often occur, the law thereanent is often not understood. A man had a decree against him; and quite lawfully, some of his property was attached

and placed in custody of another. Before it could be released or sold, the judgment-debtor seized it and took it back to his own house. Was this theft?

It could not be theft; for until the property was auctioned, it continued to belong to the judgment-debtor. The correct law is Sec. 424 I.P.C. (fraudulent removal of property). But courts often evade this section and convict of theft; mainly because theft can be tried summarily, while Sec. 424 cannot.

PART VI

MISCHIEF AND TRESPASS.

I

MISCHIEF

Mischief (Sec. 425) may be briefly defined as causing damage to property.

In its simplest form it is penalised by Sections 426 & 427 I.P.C. If the harm is caused to a domestic animal then Sections 428 & 429 apply. If to a work of irrigation or to cause an inundation, Sections 430 & 432. If to a public road or channel or to a sea-mark or land-mark Sections 431, 433 & 434. If to a decked vessel, Sections 437 & 439.

If the damage is caused by fire, the punishment is laid down in Sections 435, 436 and 438. Section 436 refers to the burning of houses; Section 438 to burning of vessels. These offences must be punished with imprisonment.

Running a vessel ashore with intent to commit theft comes under Sec. 439. The Indian Penal Code has no special provision for sabotage to railways. Section 126 of the Railway Act deals

with that. But, of course, a person so doing would be liable for murder if any one were killed.

Mischief in any form, committed after preparation to cause death, hurt or wrongful restraint comes under Sec. 440. Here again imprisonment must form part of the sentence.

Simple mischief is compoundable. Offences under Sections 428 & 430 are compoundable with the permission of the court. Others are not.

II

DESTRUCTION OF STANDING CROPS

Mischief to standing crops is among the first kinds of cases with which a magistrate has to deal. The penal Section is 426 I.P.C.; if the loss exceeds fifty rupees, then 427 I.P.C. Such offences are usually associated with those under Sec. 24 of the Cattle Trespass Act (I of 1871).

It is under the Cattle Trespass Act that cattle-pounds are established throughout India. Section 10 authorises the seizure and impounding of cattle. Section 24 penalises resistance to such seizure and rescue of cattle thus seized.

. In Ghazipur I knew of several cases of wholesale destruction of standing crops before they had reached maturity. This was not theft, for the crops were left on the field. It was wanton mischief, the result of old enmity. Being always done at night, evidence was not obtainable; and if obtainable was not reliable.

The only remedy is to bind over suspected people under Sec. 107 Cr. P.C. Those who habitually commit mischief can also be bound over under Sec. 110(d) Cr. P.C.; but I have known only one instance in which this was done.

III

DAMAGE TO WORKS OF IRRIGATION

Damage to works of irrigation is punished under Sec. 430 I.P.C. ; if likely to cause an inundation under Section 432 I.P.C. Such cases increase on the first introduction of the tubewell system. Instances also occur of canal banks being cut to obtain water at unauthorised places.

When the culprits cannot be found, the only thing to do is to cease all supply to the village where the incident occurred.

On occasions of floods, railway embankments (and sometimes even canal banks, which usually follow the watershed) dam up water, and create a serious situation for villagers. It is a matter of life and death to them; and it is the duty of the railway or canal authorities to take immediate steps to make outlets for the accumulated flood.

In many places, notably along the banks of the Sarju, Government has constructed bandhs for protection against floods. During a year of abnormal flood in Sitapur district, I remember a thrilling tale told me by some villagers. They had sat up all night trying to repair local breaches in the bandh; but finally the water overtopped it; and then they knew that all was lost.

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I have on three occasions had my own bungalow converted into an island by floods.

At Ghazipur (1916) the Ganges rose till it was nearly seven miles wide. Fortunately we were on the high bank; but even so the flood came up

through creeks and nalas. For a couple of days I sailed to Kutehery in a boat. In parts of the city, the streets looked like those in Venice.

In Sitapur the Saraiyan, ordinarily an insignificant stream, rose beyond all conception. Two years (1922 & 1923) my bungalow was surrounded by water. All day I heard sounds like reports of cannon, caused by falling houses. Katcha walls stand no chance against a flood.

In 1923 the flood reached to within a couple of inches of my floor; and, it then being late in the evening, I decided that discretion was the better part of valour. I waded to safety through water over breast deep; pushing before me a tub, filled with dry clothes and some necessities.

A flood is great fun till the water starts entering your own house !

IV

CAUSING AN INUNDATION

The dispute was between village A and village B. During a period of excessive rain the people of A dug an outlet for the rising water. It

flowed on to the lands of B, damaging some cultivation.

Several people of village A were prosecuted under Section 432 I.P.C. that is for mischief by causing an inundation.

There was no artificial embankment between the two villages; and levels were not apparent to the sight. The accused certainly made no hydrographical survey before they made the outlet; and could scarcely have foreseen where the water would find its way.

Their action had been prompted by the instinct of self-preservation. There was no intention to cause mischief. So all were either discharged or acquitted.

I remember this case because of the local inspection I made. I went on an elephant accompanied by the station officer of police. On another came the counsels of the parties.

Almost every resident of the two villages met us—several hundreds in all. Several were armed with lathis.

All spoke together; and the only way I was able to learn the conflicting stories was by deadening my ears to all sounds, save the voices of the two lawyers.

V

INCENDIARISM

The penal sections for mischief by fire are 435 and 436 I.P.C. The latter is meant for arson, that is setting fire to a building, tent or vessel. Cases under these two sections are notoriously difficult to prove. No one really sees the fire being started. Witnesses merely say they saw a man running away. That is not good enough for conviction.

In Sitapur I did have a good case. A man set fire to the crops on the threshing floor. The loss was estimated at a thousand rupees; the village was ruined. The evidence was good. I sentenced the man to two years and a fine of Rs. 1000. To my disappointment the Judge acquitted him.

The sole reason for the acquittal was that one prosecution witness contradicted the others in some details. He had been put in evidence by a rascally prosecuting sub-inspector, the most unreliable I have known. Thus ended the only case of incendiarism which I thought strong enough to convict.

Deliberate fires were common in Gonda when I was there in 1920. They were always the result of enmity. An effective check was found in binding over the opposite party under Section 107 Cr. P.C. This is what I always advise.

In the late twenties there was a series of forest fires in Kumaun as a result of the severity with which village rights were curtailed therein.

In 1942 there was an epidemic of arson in some districts. But being of a political character they were neither investigated nor prosecuted.

VI

TWO SUSPICIOUS FIRES

The Head Master of a certain District School lived in a bungalow of his own, which was heavily insured. He received orders of transfer; and after all his furniture and luggage had been despatched, and he himself had proceeded to the railway station, a fire broke out in the bungalow. It was almost completely destroyed.

There was a strong suspicion that this had been deliberately done in order to get the

insurance money. An enquiry was held; and the conclusion arrived at was that the fire was the work of an incendiary. And since the insurance policy did not provide for arson, the Head Master lost his insurance money.

This happened when I was a mere boy. I remember the case it was my father who held the enquiry. I can still picture the fire.

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I was District Excise Officer at Sitapur in 1923. It was in the middle of the hot weather. In the small hours of one morning, I was roused by an urgent messenger. The bonded warehouse where charas and bhang were stored, was on fire. On getting there I found the police already were on the scene. Practically all the stock, worth several thousands, was destroyed.

The police investigation led to little result. It was impossible for anyone to have opened the door or windows and to have thrown any burning substance inside. There was no reason even to suspect anyone of doing so. Neither the chaukidar nor anyone else (the tahsil was close by) had noticed any suspicious people about.

Finally we fell back on the theory of spontaneous combustion.

VII

CRUELTY TO ANIMALS.

Mischief to domestic animals is dealt with under Sections 423 and 429 I.P.C. The latter relates to larger and more valuable animals. Few such cases are notable; but let me speak of a horrible one I had in my very early days.

A bullock strayed into a field. The tenants, greatly enraged, seized it; and forced a danda up its rectum. This ruptured its inside, and the animal died in agony. I was shocked, and gave the tenants two years each. The Judge reduced it to one year each, remarking that, owing to the low state of morality among these people, they could not realise the enormity of what they had done.

Akin to this law of mischief is the Act for Prevention of Cruelty to Animals (XI of 1890). Section 3 is the principal penal section; but it has been applied only to certain Municipalities and Cantonments.

In a lane in Barcilly City I saw a man selling live crabs. That was all right; but he would tear

off a limb for anyone who did not want a whole crab. No notice was taken of all this; but I find a similar case was prosecuted and convicted under Sec. 2 of the Bengal Cruelty to Animals Act (III of 1900). This should also come under Sections 3 & 5 of the Prevention of Cruelty to Animals Act (EI of 1890.)

Owing to a dispute as to who should be peshimam I had to watch the Bakrid prayers at Laharpur in Sitapur district. Butchers came to the Idgah with goats. They were slaughtered there and then, and their meat sold. I know the doctrines of Islam require sacrifices during Bakrid; but surely there was no need to kill the animals in public view, and within sight of others about to be slaughtered.

VIII

TRESPASS AND HOUSE BREAKING.

Criminal Trespass is defined in Sec. 441 as any entry on property with intent to commit an offence, or to insult, intimidate or annoy the person in possession. If the entry is into a building,

tent or vessel it becomes 'house trespass' (Section 442).

The penal section for simple trespass is Sec. 447. For house-trespass from Sec. 443 onwards.

There is a special penalty (Sec. 452) for house trespass after preparation to restrain, or assault a person. This offence is neither bailable nor compoundable; and imprisonment must form part of the sentence.

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House trespass after taking precautions to conceal one's entry is known as lurking house trespass (Sec. 433).

House-breaking (defined in Sec. 445) is a more serious form of house-trespass. As the name implies, it means breaking into a house by making an entrance, or by leaping over a wall, or by breaking a lock, or after committing an assault.

The principal penal clauses for lurking house-trespass and house-breaking are as follows :

	By day	By night
Ordinary	453	456
If to commit an offence punishable with imprisonment.	454	457
After preparations to assault, hurt or restrain.	455	458

. These sections cover lurking house-trespass and house-breaking for all purposes; but enhanced sentences are prescribed if the object is theft.

An enhanced punishment is also prescribed if during the lurking house trespass or house-breaking, grievous hurt is caused to anyone (Sec. 459); and of course, if anyone is killed it is murder.

If while committing lurking house trespass or house breaking by night, any of the culprits cause death or grievous hurt, all his accomplices are responsible for that offence (Sec. 460). This joint responsibility does not apply in the case of offences committed during the day.

Sections 460 & 461 I.P.C. refer to the breaking open of closed receptacles containing property. These sections could be used when boxes and packings left out of doors, for example, on railway platforms, are tampered with.

IX

BURGLARIES AND PREVENTIVE ACTION.

Preventive action under Sections 109 and 110 Cr.P.C. is usually aimed at checking burglaries. Under both the police may arrest without warrant; and a magistrate may bind over the arrested man to be of good behaviour, and in default sentence him to rigorous imprisonment for the term the security is required.

Section 109 Cr.P.C. is used for one who

- (a) is found concealing his presence with a view to committing an offence.
- (b) Has no ostensible means of subsistence.
- (c) Cannot render satisfactory account of himself.

In theory action under Sec. 109 Cr.P.C. indicates good patrol. But in fact many of these cases have to be regarded with suspicion. Nevertheless they do not give much trouble to the courts.

Section 110 Cr.P.C. is for use against those who habitually commit crime against property, also for desperate and dangerous characters. Such

proceedings are conveniently known as badmashi cases. They are in fact the only means of checking Furglaries; but they are also the most potent cause of difference between the Magistracy and the police.

My criticism of the practical working of this section is that it is usually allowed to degenerate into routine. Instead of being used in moderation, and on occasions of necessity, every sub-inspector is expected to offer up a certain number of such victims every year.

The professional burglar is really rare. Most burglaries are committed by those driven thereto by stress of poverty. The fall in crime during the present epoch of rural prosperity should amply bear this out. To discover these petty criminals is difficult; and even if one is found, his arrest has no effect on crime.

The effect of badmashi cases on crime is seldom intelligently examined. Case after case is launched regardless of the effect. Indeed a sub-Inspector once told me that what his superiors were after was not prevention, but preventive action.

Evidence in badmashi cases is invariably stereotyped and thoroughly unsatisfactory. It consists of little more than repeated statements that the accused bears a bad character; supported sometimes by flimsy suspicions in particular cases. In fact almost the only satisfactory badmashi cases I tried during my long service were weak dacoity cases.

Magistrate, while willing occasionally to subserve their judicial conscience to executive needs, are not prepared to do so too often. All the more so as badmashi cases are now the most lengthy and the most tedious proceedings which come up before the courts.

To the police, on the other hand, such cases are a matter of prestige; since they demonstrate their power to get a man locked up without tangible evidence. It is for this reason that they resent failures in such cases more than in any others. And it has to be admitted that it is better to have no badmashi cases, than to have them end in failure.

Instructions sometimes issue regarding such matters. But they seldom consist of more than platitudinous praise of preventive action, and

exhortations to police and Magistrates to discover criminals who have never been seen doing anything suspicious.

I could suggest a method of rationalising action under Sec. 110 Cr.P.C. Though far from perfect, it would serve in great measure to reconcile the differences between the police and the magistracy. But unfortunately few are willing to extricate themselves from the rut into which they have fallen.

BOOK III

**OFFENCES AGAINST THE PUBLIC
TRANQUILITY**

PART I RIOTS AND ILLEGAL ASSEMBLIES.

I

UNLAWFUL ASSEMBLIES AND RIOTS

A gathering of five or more people is an unlawful assembly, if their common object is any of those enumerated in Sec. 141 I.P.C. These objects may be summed up as follows :

- (a) to fight lawful authority,
- (b) to commit an offence,
- (c) to compel anyone to do what he is not bound to do, or to omit to do what he is entitled to do.

A member of an unlawful assembly is punishable under Sec. 143 I.P.C. If he continues a member even after it has been ordered to disperse, he is punishable under Sec. 145 I.P.C. If the assembly is technically not unlawful, but is likely to disturb the public peace, it may also be commanded to disperse; and if it refuses to do so, the members are liable under Sec. 151 I.P.C.

When any unlawful assembly uses force or violence in pursuance of its common object, it is

said to commit a riot. (Sec. 146). The punishment for rioting is laid down in Sec. 147; if armed with deadly weapons, in Sec. 148 I.P.C.

Section 149 I.P.C. is important. Every member of an unlawful assembly is punishable for everything done by any other member of that assembly in pursuance of its common object. For example, if the object of the mob is to eject any person from land he holds; and if in that endeavour anyone is killed, every member of the assembly is guilty of murder. In practice, however, an attempt is made to discover who really committed the act; and, though convicting all of the offence, to punish only him with severity.

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Riot is a cognizable offence; but such cases are now not investigated by the police, unless something more than simple hurt is caused. In my early days I was struck by the number of reports of marpit in which only four assailants were mentioned. The reason was that if more had been shown, a case of riot would have had to be registered. One should not discourage this practice. From what will follow in later chapters it will be plain that the temptation to swell numbers is one greatly to be deprecated.

II

DIFFERENT KINDS OF RIOTS

Most riots are the results of disputes over land. I am unable to remember any in detail just now; but allusion to, one will be found in the chapter entitled 'Cross Cases of Riot.'

Sometimes, though not often, the cause is a woman. One such case is described in the chapter entitled 'A Case of Abduction.'

There are also other causes. I shall presently describe two which were the result of rivalry, and in which the motive was revenge. Of the first I speak only from memory.

The most important cases of riot are those over communal matters. Of these I shall also describe two. I could write a whole book on the subject; and give my own ideas as to how they could be prevented and dealt with. These views are based on considerable experience; and their application could, I am sure, remedy much. But they would not meet with universal approval, particularly in quarters which really desire to keep up a rift between the two major communities in the country. I shall, therefore, say no more.

III

RIVALRY AND REVENGE.

I speak of this case only from memory. I wish I could give more detail, as it was a typical case of a riot the result of rivalry.

Dwarka Ahir, a noted desperado, had an enmity with a Zemindar. The Zemindar, as Zemindars often do, engaged another desperado, Janardhan Brahmin, for his protection. One night Dwarka with a gang of eight or ten men, waylaid Janardhan within a mile of a railway station. He was severely beaten, and all but killed. After the gang disappeared, people from the station and neighbouring town carried him to hospital.

The incident had taken place late in the evening; but the evidence was good. The culprits, who had all been recognised, were convicted and sternly punished.

IV

A WELL PLANNED RIOT.

Tribeni Dubey was a resident of Dubepur. Short of stature and slight of build, one would not

have guessed his temper. He was feared throughout the neighbourhood.

A few miles from Dubepur, in the village of Sonharia, lived Ram Dhari Brahman, and his brother Jamnu. Their retainer Kalpu Singh lived with them, but also had means of his own.

Some miles from these villages is the important ferry at Chandpur which is leased by the District Board. The trouble began in April when Tribeni and Kalpu both bid for it. Kalpu's bid was the highest; and much bad blood ensued because of this rivalry.

On the 27th of July, Tribeni visited Chandpur; and was rather severely beaten. He was carried to the Thana at Nainpur, some 10 miles away; and there in his report mentioned his assailants to be Kalpu and some others. Though badly beaten, none of the injuries were grievous.

He was taken to the District Hospital and for a long while was under treatment there. Nevertheless, he lingered there much longer than he need have done. By the 3rd of September the only injury left on him was small ulcer on his leg; and in that only the skin was left to cover over.

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On the 7th of August Jamnu lodged a report at the Nainpur, Police Station. He stated that Tribeni, who wrongly imagined that Kalpu had had him assaulted, was arranging to revenge himself by raiding his (Jamnu's) house. A number of names were mentioned as those who had agreed to help Tribeni.

The Station Officer deputed a constable to stay at Sonharia, hoping that this would prevent anyone taking the law into his own hands. The constable was, of course, changed every third or fourth day. On the 3rd September, Constable Sukhdeo Singh arrived there.

A very real danger appears to have been sensed. Sukhdeo Singh gathered together several Ahirs of the village to sleep along with him, and Jamnu at Ramdhari's door. Kalpu was too afraid to sleep outside; and did so indoors.

On the night between the 4th and 5th September, everybody stayed awake till midnight. It was then arranged that three or four at a time should remain on watch, while the rest could sleep. But about 3 p.m. even these sentries dozed off.

About 4 a.m. in the morning a body of over twenty men rushed on the sleepers. The constable was disabled with two lathi blows across his legs. Others were similarly injured. The rest rushed into the verandah; and were pursued there and belaboured. The object of the raiders however was only to clear the way to Kalpu. Repeatedly Tribeni and another man called for him; but Kalpu was hiding in the attic of the house.

Eventually, not finding him, the raiders retreated. As they did so they sounded a small drum they had brought with them; and raised the slogan of "Tribeni ki jai. Kalpu ki chhai."

Very shortly after, the Chaukidar, who lived in a neighbouring village, came and found the nine men injured, and lying on the ground. He arranged for a dooly to carry the wounded constable to the thana. There Sukhdeo Singh gave a report in which he mentioned having identified Tribeni and several others.

Sub Inspector Mohammad Ismail, the Station Officer, proceeded to the mauqa immediately. He took the statements of all the injured men; and

sent them off for medical examination. He also discovered a witness in Jogi Ahir. Jogi had risen very early that morning to attend to his cattle; and had seen the fight from a short distance. It was early dawn; and he was able to identify several of the men.

Two days later some important witnesses were discovered in Bistrampur, a village two miles from Sonharia. One of them related how Tribeni and his party had, the evening previous to the riot, halted there and been entertained at the house for one Tilakdhari. The other was Narotam Mallah who plied a boat across the Gangi, which runs below this village. The evening previous to the riot he had ferried the party across the stream; and the following morning had taken Tribeni and Dasrath back across it. He had heard them say something about an ekka waiting for them a few miles off.

The evening before the riot, constable Bachu Ram at district headquarters had seen Tribeni go by on an ekka in the direction of Nainpur. Since Tribeni was a well known character, he had reported this at the Kotwali. The Kotwali informed Sub-Inspector Mohammad Ismail; who

followed up this information by finding Sarwar Khan, the ekkawala in question.

This ekkawan related how he had taken Tribeni and one other from the gate of the District Hospital to the level crossing at Kusmi, some eight miles away on the metalled road. There the two had left him; but had bade him wait till their return. They returned about 4-30 a.m.; and were carried back on the ekka to the District Hospital.

On the 5th of September (that is a few hours after the riot) Tribeni could not resist the temptation of proceeding to the Collectorate to see what was happening there. As he was walking away, he was recognised by a police constable who promptly arrested him. He was taken to the lock-up; and clapped into irons.

The chain of evidence against Tribeni and his gang was now complete. One difficulty, however, remained. The Compounder on duty at the Hospital had not noted Tribeni's departure and return. He should have done so, of course; but what is required to be done is not what is always done; and neither side examined the Compounder.

Tribeni also pointed to the wound on his leg for the treatment of which he was in Hospital. But it had healed for all practical purposes, and could not have hindered his movements. It was clear Tribeni had long overstayed his time in Hospital, merely to be ready with an alibi.

In the end the Police challaned twenty-one accused. Five of the eye-witnesses gave such long lists of people they professed to have identified, that I discredited their evidence altogether. Four accused named by them alone were acquitted.

Of those that remained, four were named by only one witness each; and it was not safe to convict them either. Five were named by two witnesses each; of them I decided to convict only two who had been named in the first information report by Sukhdeo Singh. This left us with ten accused whose cases were considered in detail.

In the end I convicted all ten of riot (147), house trespass (452) and hurt (332-323 I.P.C.) Nine were sentenced to one year each. On the tenth, Tribeni, various terms were

imposed under the different sections, the aggregate being four years. In addition, each of the ten convicted men was bound over under Sec. 106 Cr. P.C. to keep the peace for a period of one year following his release.

V

A COMMUNAL WAR

It was in a large city in the middle 'twenties. The Hindus had for a long time resented the manner in which Muslims had been allowed to interfere with them. I know that during some festival the Muslims had looted a bazaar of Hindu shops. But the climax came during Mohurram, when, to cut a long story short, an Arya Samaj temple had been desecrated, and some leading gentlemen of that faith needlessly arrested.

About six weeks later a Hindu festival, escorted by Magistrates and Police, was taken out. The Hindus were obviously anxious to make as much noise as possible, in revenge for the restrictions and indignities they had had to suffer during

Mohurram. When the procession came in front of a mosque, some Mohammedans dashed out with lathis, and more emerged from a lane. The leading processionists fled. The armed guard, under command of a subahdar, ordered fire; and two Muslims fell. This ended the trouble for the time being.

But from that moment a virtual state of war was declared between the Hindus and Muslims in the city. During three days of bedlam, seven members of each community were assassinated, to say nothing of scores who received minor injuries.

The methods adopted by the two communities were very different. The Muslims went out in hordes and in broad daylight, attacking Hindus, destroying temples and so forth. The Hindus had their revenge mostly at night. A man hidden in a lane or behind a door would dart out, stab a lonely passing Muslim, and then retreat into the darkness. On one occasion they thus killed a fellow Hindu, who wore a beard and had something of the mein of a Mussalman. Whenever a Hindu was murdered, a similar fate met a Muslim somewhere in the town.

Numerous cases of riot and assault were reported; and several which were not registered came up later on private complaint. It took me a twelve-month to deal with these cases; and I earned the unjust reputation of being pro-Hindu and anti-Muslim. But cases could not be decided on a statistical basis; and the very 'modus operandi' of the two communities was responsible for the unequal results. It was not my fault that 300 Muslims were prosecuted and only 18 Hindus. Of the former 150 were convicted, and only three of these escaped on appeal. Of the latter, 17 were discharged (not acquitted); and so palpably fabricated was the evidence, that no attempt was made to go up in revision. The one remaining Hindu accused was convicted; but he died before his appeal could be heard.

Nine Muhammadans had been prosecuted in the main case of riot, where the police had opened fire. The accused set up the fantastic plea (though not an uncommon one in such cases) that the subahdar, who was a Hindu, had fired on the Muslims out of pure malice. This was, however, absurd; and in the end, six of the accused were convicted.

on having negotiated the danger point, when a messenger raced up to us in breathless haste. The tazia from the suburban village had been attacked and set on fire.

The Hindus had diverted our attention to the thakurdwara, while mischief had been planned outside the town. The principal conspirators had also arranged alibis for themselves by staying with one or other of the many magistrate on duty. It was the irony of fate that one of the foremost had actually been detailed by order, to accompany a fanatical Muslim officer, whom he was thus able to produce in his defence.

The Superintendent of Police and I proceeded immediately to the burning tazia. The constables, accompanying it were still there; and from them we heard the tale. As they had been passing an arhar field, a body of men darted out of it. Their first act was to smash the gas lamps with the procession; and, darkness thus secured, they set fire to the tazia. The Muhammadans had fled; though not before three of them had been killed. Two of the bodies were dragged to the river, and were never found. The third man had fallen in a field, and his body was discovered there next day.

There is a curious sequel to this story, which I should relate before going farther. It was the month of May; and the men had been killed about midnight. When the post-mortem was held the following evening the Civil Surgeon (a Hindu gentleman), while finding death had been caused by injuries, opined that it had occurred only 2 to 4 hours before the post-mortem. (I believe he confided to a friend that he had by a slip written '2 to 4' instead of 24). Strangely enough this was not noticed till the case came to court; and the Civil Surgeon held to what he had written. The slip (if slip it was) was the last argument which shattered the case for the prosecution.

Two cross-cases of riot were run as to the Holi incident. That against the Hindus was palpably false and failed ignominiously. That against the Muslims was completely successful; four men were sentenced to death, and about eighteen to transportation for life. The High Court, however, reduced the four death sentences to transportation for life.

As to the the reprisal by the Hindus, when the tazia was burnt and three Muslims killed, no evidence was possible. As frequently happens the Muslims perjured themselves by claiming to have identified several respectable Hindu residents of the city, none of whom would have dreamed of taking part in a midnight riot outside the town. It was known, however, who had arranged all this; but, as already related, almost all these had provided themselves with unimpeachable alibis. Everyone of the accused was discharged.

VII

SIFTING THE EVIDENCE

Riots are the most difficult of all cases to decide. The factum of the offence is seldom open to doubt. But there are always several accused; and it is always possible to slip in the names of a few people who were not there.

For this reason it is rare to find a man convicted unless he is named in the first information report. And, unless the number there mentioned

is small, a good deal of sifting is required even with regard to them.

The only way of doing this (and the same method would apply to dacoity cases) is to prepare a chart. A column should be devoted to each accused; and a line for each witness and each report. The cages, thus made, should be filled in only if any evidence worth noting appears on the record.

If an accused is named in the first report, or by a particular witness, I would note 'N' (Named) in the relevant cage; if merely identified, 'R' (Recognised). Any specific act attributed to him should also be noted *e.g.* that he carried a spear or that he struck a particular individual or that he said something striking. If any tangible enmity is alleged with a particular witness, that too should be noted in the relevant cage.

General remarks about each witness should be noted at the end of the line; those about each accused, at the foot of the column. Injuries on witnesses and accused should be shown here; also their status, if remarkable. In the alternative the underlining of the name could indicate he bore an injury.

The next thing is to examine the evidence of each witness, as indicated by this chart. In communal riots (where people may be named, not only because of enmity, but also merely because they belong to the opposite community) I would reject the evidence of any witness who named more than six accused. For in the stress of circumstances, I do not believe he could recognise more. In cases of riots of other descriptions I would possibly increase the number; but certainly not to more than ten or twelve.

If the number of accused is large, I would acquit those named by less than two or three witnesses. Exceptions should be made, if some specific act is ascribed to an accused, for that is something tangible, or if he bears an unexplained injury. On the other hand tangible allegations of enmity should also be considered.

All this may appear a very artificial method of sorting out the innocent from the guilty; but it is the only way of doing so.

VIII

HOW TO APPLY A LEGAL MAXIM.

There is a legal maxim which runs “*falsus in uno, falsus in omnibus*” or in plain English, if any one is caught in a single falsehood, his entire evidence should be rejected. Mr. Justice Young, while on the Bench of the Allahabad High Court laid down this principle ; but later modified it by ruling that it applied only when the falsity of a particular statement had been *proved*.

Like all principles, this also can be carried to extreme. Discrepancies immaterial to the main issue, may be and should be ignored. It may also be permissible to ignore exaggerations, such as giving a riot the colour of a dacoity. It would be making an almost superhuman demand of most witnesses to ask them to avoid all exaggeration.

But there is one point which I would absolutely insist on. If any witness is found to have falsely named any particular accused, his evidence should be discarded against all. If he names an exorbitant number of accused ; and it is obvious he could not have noticed them all, his evidence should also be rejected in toto.

This is necessary if we are to teach people that perjury will not pay. It may sometimes, go against the grain to acquit large numbers, some of whom are undoubtedly guilty. But against possible injustice in a particular case, must be weighed the moral effect on many future ones.

I remember a serious riot. A man and two or three of his sons and nephews were all but killed. But in the first information report they gave about twenty-five names. And every prosecution witness named all the twenty-five. By questioning them I ascertained that the entire family in the village had been thus included—father, brothers, sons, cousins, nephews and not merely the adults, but the adolescents and the boys as well, also one or two women.

I had to choose between convicting the lot or discharging the lot. I adopted the latter course. It was hard to let a serious case go by entirely unpunished; but it was more important to teach people that such dangerous perjury will not pay.

IX

EXAGGERATING THE NUMBER OF ACCUSED

In some districts there is a pernicious habit of exaggerating the number of accused. Banda was the worst I had in this connection ; and Ghazipur a bad second. In the former, no one making a report was content with less than twenty or thirty names. In fact it was sometimes said that their witnesses refused to give evidence, unless their enemies were also named, whether right or wrong. And they made things more difficult for the court by leaving it no means of discrimination. Every witnesses catalogued the same names. In consequence the number of wholesale acquittals was high ; for no court will convict all the accused for the reason that some were certainly guilty.

I had two alternative suggestions, which if accepted as a policy, would I think have remedied matters. The first was that the police should themselves exercise discrimination ; and not send up all named in the first information report. The second was that the police should refuse to investigate cases where an excessive num-

ber of names appeared in the first information report.

My first proposal met with opposition for two reasons. The first was that it would give the police a chance of making money ; but was that any worse than wholesale acquittals. The second was that courts would criticise the police for discriminating between those against whom evidence was alike. Here too I think it is better to take this chance than to court disaster.

My second proposal also did not meet with approval. This did not deter me from wholesale acquittals ; and I believe most courts would have acted likewise. Had the police refused to touch such cases ; and left the parties, themselves, to prosecute them, it might have meant a loss of a few convictions to the police. But what was that compared with the advantage to be gained by teaching the public to be truthful, or at least moderate.

X

CROSS-CASES OF RIOT.

There is another aspect of riot cases to which I must here refer. Usually one party is in the right, and one in the wrong. Sometimes the latter gets the worst of it. The tendency of the police is to side with the one which has suffered most. This may in some ways be for the best; and so long as true facts are presented, no objection need be raised. But courts should view matters in correct perspective. Let me cite two cases.

It was in Ghazipur district. The dispute was over a field. Party A had an indisputable right to it. It had been so decreed in a suit against party B. Delivery of possession had followed the decree. Yet Party B invaded the field. A great riot followed in which men were injured on both sides; and one of Party B was killed.

The police chalaned Party A; and Party B was left to prosecute its own case by petition. This really was wrong. The right was with Party A. If one of Party B had suffered death,

it was because they had brought the trouble on themselves. Party A was entitled to oppose encroachments on their rights; and there is no golden scale to decide at what point the right of private defence had been exceeded.

This, I am glad to say, was the finding of the Judge. Party B was convicted. Party A was acquitted.

The following case is from Banda. The zamindar with two friends went with a gun to make a demand of certain tenants. The zamindar used the gun to intimidate the tenants. The tenants felled the zamindar (who died later) and injured his two friends. They seized the gun and carried it to the thana where they lodged a report. Later a cross report was lodged by the zamindar's friends.

The Police prosecuted the tenants. The tenants filed a cross-complaint. They wisely told the truth; and took their stand on the plea of private defence. Both parties were acquitted. (This story is told in greater detail in a chapter entitled 'Self Defence versus Self Defence.')

XI

SOME USEFUL SECTIONS

Some useful sections should be remembered when deciding cases of riot, hurt and trespass.

The first is, Section 106 Cr.P.C. When an accused is convicted he may be bound over to keep the peace after his final release from prison. It is as well when trying the case to ascertain whether this is necessary.

The second is Sec. 522 Cr.P.C. If the object of the riot has been to oust a man from lawful possession of immoveable property, this enables the court to restore it to its rightful owner. People can then know where they stand; and subsequent litigation under Sec. 145 Cr.P.C. is prevented.

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Mutation & Correction cases under the Land Revenue Act (III of 1901) are decided on the basis of possession; and, if this cannot be ascertained, by summary enquiry into title. After that the court may deliver formal possession to the person held to be in possession (Sec. 200) or the person held to be entitled to it (Sec. 46)

(2). The former section is in need of slight amendment. Nevertheless it is a pity more use is not made of these two sections. Many a dispute over land would be ended thereby.

I would here also refer to Sec. 250 Cr.P.C. which enables a court to award compensation to persons falsely involved as accused. I never failed to use this section when large numbers were unnecessarily impleaded. On occasions, the total compensation thus awarded to those discharged and acquitted, exceeded the total fine imposed on those convicted. This may sound incongruous ; but really is not. I look on perjury as a far more serious offence than riot.

PART II

RIGHT OF PRIVATE DEFENCE

I

RIGHT OF PRIVATE DEFENCE

The law of private defence is found in Sections 96 to 106 of the Indian Penal Code. But any one wishing to take advantage of this right, must claim it specifically. Unless such a plea is raised, the court cannot make a presumption to this effect. (Sec. 105 Evidence Act). Many who could claim this right, make a blank denial of obvious facts, with results disastrous to themselves.

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The right of private defence may be exercised for

- (a) the defence of either one's own body or that of another.
- (b) the defence of either one's own property or that of another, from theft, robbery, mischief or trespass.

When defending the body, it is permissible to cause the death of the assailant, if it is apprehended

- (a) that he will cause death or grievous hurt.
- (b) that he will commit rape or an unnatural offence.
- (c) that he will kidnap or abduct.
- (d) that he may confine the victim so that he may not have recourse to the authorities.

When defending property, it is permissible to cause the death of one committing

- (a) robbery, house-breaking by night or arson or
- (b) theft, mischief, or house-breaking, which may lead to the apprehension that death or grievous hurt might ensue if no defence is put up.

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II

A TENDENCY OF THE POLICE

Whenever there is a fight and a person is killed, the police always prosecute the party which has suffered the least; and leave the lesser sufferer to bring a private complaint. This may, in some ways, be for the best; but the attitude of courts should be different. Let me describe a case I had in Ghazipur.

The dispute was over a field. The right of Party A to it had been repeatedly adjudicated. Formal possession had been delivered to them. Yet Party B (which had been impleaded in all these proceedings) invaded the field, and there was a riot. Both sides suffered injuries; but a man was killed on the side of Party B.

The police thereupon prosecuted Party A; which had to seek its remedy by private petition. I should have discharged Party A and proceeded against Party B alone; but for some reason which I now forget, I committed both cases to the Court of Session. In doing so, however, I clearly expressed my opinion as to the innocence of

Party A and the culpability of Party B. I am glad to say that the Sessions Judge upheld my views.

III

A SCANDALOUS CASE

The tendency with the police to side with the greater sufferer is in some ways for the best.

But there is one important reservation. The facts must be correctly presented to the Court, which should in effect be asked to pronounce on the issue of private defence.

I had to deal with one exceedingly bad case. A mob attacked the house of a mill-owner. When no help appeared and the rioters began to climb on to the upper storey, the mill-owner's son fired his gun. Only two men were wounded, neither very seriously ; but the mob was dispersed.

Some superior officers then came up, refused to listen to explanations, confiscated the gun and

arrested the mill-owner's son. Finally he was prosecuted for an attempt at murder ; while the mill-owner was left to file a private petition against the rioters.

Had this been all, I would not have had much to say. But instead of giving the true facts and asking for a finding on the issue of self-defence, a totally false story was put up as to how the mill-owner's son fired on two innocent passers-by. And the climax came when three policemen were suborned to support the story.

I convicted the rioters, and discharged the mill-owner's son. I commended strongly on the conduct of the police. The Judge was equally strong in his remarks. The High Court upheld my judgment.

IV

EXCEEDING THE RIGHT

In exercising the right of private defence one must not cause more harm than is absolutely necessary (Sec. 99 I.P.C.) But there are rulings

that this must not be too strictly interpreted. There is no golden scale to determine at what point the right has been exceeded.

On the other hand, if the defender is so situated that in exercising the right of private defence he may harm others, then he is entitled to take that risk (Sec. 106 I.P.C.) For example, if one is attacked by a mob, he may fire at it even if this endangers innocent children mixed up in the mob. (Illustration to Sec. 106 I.P.C.)

Exception 2 to Sec. 299 I.P.C. (the definition of murder) lays down that if a person exceeds his right of private defence and causes death, then he can be liable only for culpable homicide not amounting to murder.

The law of private defence must be liberally construed. When faced with sudden danger, one has neither the time nor the intellect to ponder on legal questions. The immediate and all-absorbing problem is that of self-defence. So long as one is neither vindictive nor goes to excess, he must be allowed the benefit of the right of private defence.

V

SELF-DEFENCE VERSUS SELF-DEFENCE

Is there a right of self-defence against an attack which is itself delivered in self-defence? This conundrum was put to us at the departmental examination held in April 1913. The answer would, I suppose, depend largely on the circumstances of the case. If A attacks, and B defends himself, A could scarcely have a right of private defence against B.

The law about this is clear only if anyone is killed. A man who causes death on grave and sudden provocation is guilty only of culpable homicide not amounting to murder. If, however, he himself provoked that provocation or that provocation was given by anything done in private defence, then he would be guilty of murder. (Vide exception to Sec. 300 I.P.C., especially provisos 1 and 3.)

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One sometimes has cases of villagers turning out to face dacoits. Sometimes a dacoit is killed or severely wounded. But no charge of homicide or grievous hurt is registered. On the other hand, if any of the villagers are killed, all the

dacoits are indicted for dacoity with murder ; and it would be absurd for any of them to set up the plea of private defence.

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In this connection, we might also consider the illustration to Sec. 106 I.P.C. A is attacked by a murderous mob. He defends himself by firing a gun ; and thereby harms some innocent children in the crowd. A member of the mob could scarcely claim the right of self-defence ; but an innocent child thus endangered could.

VI

WHO ACTED IN SELF-DEFENCE

Krishnanand was Record Keeper. He was eccentric in his dress, and came to be known as the Babaji. Though not a shikari, he held a licence for a double-barrelled gun.

He had an elder brother Gopalji, and a younger one named Lalji Sahai. Mulchand was their uncle, Parmanand was a collateral. These five men jointly held the zamindari of village Doha, where also were their homes.

Gopalji was lambardar ; but he dissatisfied all his cosharers and was replaced by Parmanand. He revenged himself by granting receipts for rents which had never been paid ; and he put up the tenants not to recognise Parmanand. On a complaint made by Parmanand, the Tahsildar sent for several tenants and warned them of the change in lambardari.

Among those thus called by the Tahsildar was Lodha Vaish. He had extensive tenancy and was also a considerable money lender. Gopalji had granted him a receipt purporting to be rent paid in advance for several seasons. He was however also sub-tenant of a holding in which Krishnanand alone was the recorded tenant ; and this rent could not legitimately have been paid to Gopalji.

Lodha Vaish had five sons, of whom I need name only one Hira Lal. Hira Lal had an infant daughter, who had not even been given a name when the incident we are about to describe took place.

It was a holiday. Krishnanand was at home in his village. In the evening he placed two blank cartridges in his gun, and proceeded with Lalji Sahai and Mulchand to do a tour of the fields. They ended up near Lodha's house. Seeing Lodha, Krishnanand asked him for the shikmi (sub-tenancy) rent. Lodha insisted he had paid this also to Gopalji. High words followed.

Krishnanand levelled his gun at Lodha, presumably only as a threat. Lodha and Hira Lal did not however interpret the gesture in this manner. Feeling they had to act quickly and boldly if they wished to save their lives, they rushed at Krishnanand with their lathis.

Krishnanand now realised his danger, and fired his gun. The shot grazed Lodha's left forearm; and struck Hira Lal's infant daughter on the face, just below her right eye. Lodha and Hira Lal seized the gun; and belaboured Krishnanand. Lalji Sahai and Mulchand who came up to his assistance were similarly attacked.

This at least is the story I pieced together in my judgment.

Lodha and Hira Lal acted wisely thereafter. They proceeded to the Kotwali, and handed over the gun with the two empty cartridges in it. They reported that they had seized it and attacked Krishnanand, because he had fired at them. Lalji Sahai and Mulchand were only casually mentioned.

An hour later, Krishnanand arrived with Lalji Sahai and Mulchand. They reported that they had been attacked by Lodha and his five sons and two others, merely because they had demanded their rent from Lodha.

All three bore injuries. Krishnanand's right clavicle had been fractured. What proved fatal, however, were two contused wounds crossing each other on his scalp above the right ear. He was admitted to hospital as an indoor patient; but insisted on going home four days later. Within a few hours he was brought back in high fever. Two days later he developed erysipelas; and the next he was dead.

The post-mortem showed he had died of meningitis resulting from infection to the wound in the scalp. The doctor was definite that death was not the direct result of the injuries inflicted on

him. So at most his assailant could be guilty only of causing hurt.

The police charged Lodha and his five sons. Lodha privately prosecuted Lalji Sahai and Mulchand.

There was really little difference between the stories given by the opposing parties. The only question was whether Krishnanand fired before Lodha attacked; or whether Lodha attacked before Krishnanand fired.

It was a difficult question to decide. On the one hand, Krishnanand was a man of education; and though he may have aimed the gun, he could scarcely have been so foolish as to fire without provocation. On the other hand Lodha was no ignorant rustic, and was of a caste usually considered meek and submissive. He hardly would have attacked merely because he was asked to pay his rent.

After due consideration I held the sequence of events to be as described earlier.

But a difficulty arose. The Assistant Surgeon who examined Lodha and his little grand-

daughter was definite that the injuries they bore were not due to gunshot. Had they been gunshot injuries, he said, some singing or blackening due to gunpowder would have been found. This however was only an opinion. The evidence to the contrary was strong; and it was not likely the injury on the little girl had been deliberately caused by her father and grand-father.

To put matters to the test the Reserve Inspector of Police was summoned. In presence of the court he opened out a blank cartridge. In its nose was some cardboard and felt wadding. Behind this was the gunpowder. The Reserve Inspector opined that the gunpowder could not carry more than five yards, the wadding not more than ten yards. (The parties had been eight or ten paces apart when the quarrel took place.)

Next the gun was loaded with two similar blank cartridges. One was fired at a katcha wall, the other at a pucca wall; in each case from a distance of ten yards. Much mud was knocked off from the former; and in the latter, plaster to the depth of half inch was chipped. But in neither case was any gunpowder or any blackness discernible on the walls.

The question remained whether, accepting the view adopted by the court, either party could claim the right of private defence.

The fight had been entirely unpremediated on both sides. It was therefore not possible to apply either Sec. 64 or Sec. 149 I.P.C.

Lalji Sahai and Mulchand could not have done any damage either to Lodha or to his granddaughter, for the injuries on both were caused by gunshot. They could conceivably have caused a swelling found on Hira Lal. But it could not be said which of the two had caused it. And even if this were known, the injury was caused while defending Krishnanand from a murderous attack. So Lalji and Mulchand had to be acquitted.

As to Lodha and Hira Lal (their co-accused were discharged for insufficient evidence) they clearly had a right of self-defence against Krishnanand. When Lalji Sahai and Mulchand intervened, it must have looked to Lodha and Hira Lal that they were abetting Krishnanand in his murderous design to shoot. So here also the right of private defence prevailed.

It could be argued that Lodha and Hira Lal exceeded the right of private defence. But in such moments there is little time for thought; and there is no golden scale to decide when the right of private defence has been exceeded.

In the end all accused in both cross-cases were acquitted on the ground that they had merely exercised the right of private defence.

VII

A TRICKY CASE

A party of military police was patrolling the ravines along the Jumna. It consisted of three under-officers and eight armed constables; and was accompanied by a Sub-Inspector of Civil Police, who acted as liaison officer.

About 22'00 hours the party, after patrolling several miles, reached a village deep in the ravines. On climbing a cliff they came to the house of one Kali Charan. There they were refreshed with water and tobacco; and presently a relation of Kali Charan's proposed that some charpoys might be brought on which the police could rest.

The village chaukidar with two armed constables was sent out to the quarter occupied by Chamars. But the Chamars, who had on recent occasions showed signs of turbulence, were disinclined to lend their cots. On a report being sent to the Sub-Inspector he directed another two constables to proceed to the spot; and to call the Chamars to him if they still proved obdurate.

On getting to the first house the constables abused the Chamars; and asked why they had not sent along the beds. They actually upset a cot on which two little girls were sleeping. Next they proceeded to the chaupal and there they upset a charpoy on which a little boy was sleeping. They abused the Chamars sitting on the chabutra, saying they had no business to sleep when they (the police) were doing without charpoys. They ordered the Chamars to come along with them to the Darogha. When the Chamars refused, the constables caught two of them by the hand and tried to pull them down from the chabutra.

The upsetting of the charpoys together with this attempt to pull the men down from the chabutra, inflamed the entire population of adult

Chamars. About a dozen of them immediately assailed the constables. Constable Abad Khan, after receiving a lathi blow on an ankle ran off to Kali Charan's house to report the serious situation which had arisen. The Chaukidar showed a clean pair of heels, though not before his brass bound lathi had been seized by a Chamar.

For a part of the time at least constable Jamna Singh held up his gun with both hands to parry the lathi blows aimed at him, for the rifle showed distinct lathi marks. He was temporarily disabled by injuries on his left arm and forearm and his gun was wrested from him. When he fell, some of the Chamars held him down.

Constables Jagdeo Prasad and Mohan Singh now fixed bayonets to defend themselves. They undoubtedly hurt five men with their bayonets. A lathi blow broke the wooden part of the nose-cap of Jagdeo Prasad's musket. He himself was felled by lathi blows across the head and the back. Some Chamars held him down also.

Mohan Singh was now left standing alone. A lathi blow dented the trigger-guard of his

musket. Being in imminent danger of his life, he took the extreme step of firing his musket. He did so twice. One of these shots smashed Sundar Chamar's right cheek and knocked off the lower half of his right ear.

Meanwhile the rest of the police party was rushing up from Kali Charan's house. On the way a constable fired his gun to frighten the Chamars. By the time they reached the spot, the Chamars had made themselves scarce, even the wounded men. A search was made, and Jagdeo Prasad's broken musket was found leaning against the outside of a wall near a heap of thorns.

The police party did not consider it advisable to stay longer in the village ; and so returned to their headquarters.

At 5.15 hours the following morning a Chamar of the village lodged a report at the Thana, fourteen miles from the scene of the occurrence. He described how the constables had upset charpoys with children sleeping on them ; but said nothing of how they had attempted to pull down the Chamars sitting on a chabutra.

About an hour later the Patrol was also at the ~~thana~~ ; and the Sub-Inspector who had been with it, lodged another report. Nothing was said there of the Charpoys being overturned or of Chamars being pulled away from their Chabutra.

Both reports spoke, of course, of an affray ; but each party represented itself as the victim of a gratuitous attack.

On receiving a report by telephone, I proceeded to the spot in company with the Superintendent of Police and the Sub-Divisional Magistrate. It was no light undertaking for the afternoon of the 21st May. For 36 miles we went by car (the last six an exceedingly bad metalled road) and then six miles by ekka along a very rough path through the ravines.

On the way we met two very seriously injured chamars being brought along on doolies. I recorded their dying declarations. One of them, Kundan, whose abdomen had been pierced by a bayonet, died within an hour ; the other Sunder survived, though his face was dreadfully disfigured.

There could be no doubt there had been an affray. The only question was, whether to proceed against the Police or against the Chamars or against both. And whichever view was taken which of the people concerned should be prosecuted.

All the injuries suffered by the Chamars were on the front of their bodies ; all bayonet wounds were on the abdomen or below it. This showed that the Chamars must all through have been facing the constables ; in fact pressing them into an attitude of self-defence.

The only constables against whom any charge could be laid were Jagdeo Prasad and Mohan Singh. They had to face a murderous attack ; and could easily have claimed the right of private defence under Sec. 100 I.P.C. The only difficulty was that they themselves, in some measure at least, had provoked the Chamars to attack them.

They (or rather the police party) had upset charpoys on which children were sleeping ; and had attempted to pull down certain Chamars from the chabutra on which they were sitting. This amounted, even if technically, to assault under Sec. 352 I.P.C.

If this view were accepted, the Chamars also had a right of private defence against the constables (Secs. 101 and 104 I.P.C.); though I doubt whether they had a right to oppose them in so ferocious a manner (last paragraph of Sec. 99 I.P.C.)

I concluded my magisterial enquiry, but was in a quandary as to the action, I should propose. Finally I decided that the issue of private defence should be left to the judgment of a court. I directed that twelve Chamars should be prosecuted for riot and causing hurt under Sections 147, and 323 read with Sec. 149 I.P.C.; and that constables Jagdish Prasad and Chhote Lal should be prosecuted under Sec. 304 I.P.C. for culpable homicide not amounting to murder. (In view of exception 2 to Section 300 I did not consider a prosecution for murder feasible.)

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It is a strange coincidence that while at the Club the evening before this incident, I referred to a question put to me at my departmental examination 32 years earlier "What right of private defence is there against an act itself committed in self-defence?"

PART III

MAINTENANCE OF THE PEACE

XII

THE MAINTENANCE OF THE PEACE

Under Secs. 142 and 150 of the Code of Criminal Procedure any police officer may intervene to prevent the commission of a cognisable offence, such as a riot ; and may arrest anyone bent thereon.

Under Sec. 107 Cr.P.C. a magistrate may bind over anyone who is likely to cause a breach of the peace ; and if danger is imminent, may under Sec. 117 Cr.P.C. demand immediate security pending the completion of the proceedings. In default of finding the security, the accused may be committed to custody.

Action under Sec. 107 should be carefully controlled ; and most private applications therefor should be discouraged. There is also another tendency which should be suppressed, even when

the police make such applications. This is tendency to ask for wholesale action is abusing the processes of the law ; and action only against ringleaders is justifiable.

As to Sec. 117 Cr.P.C. it is an extremely useful section, especially in times of communal stress. But here again wholesale action is to be deprecated.

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Sections 145 and 147 Cr.P.C. deal with disputes over land and easements thereon. A magistrate may, after enquiry, decide which party is entitled to possession of the land or to enjoyment of the easements thereon. Thereafter no other person may interfere, unless and until he obtains an order to the contrary from a civil court.

Such enquiries are often protracted ; and in cases of emergency a magistrate may attach the property pending decision of the case.

Anyone who violates such orders is liable to prosecution for criminal trespass.

These sections are also liable to much abuse. Unless checked, there will be litigation over every field in a village. Action should be limited to important cases only.

It should be remarked that no magistrate can be compelled, even by the police, to take action under any of the preventive sections, that is Secs. 107, 109, 110, 145, 147 Cr.P.C. And all magistrates, while realising their responsibility for the maintenance of the peace, should not abuse their powers.

Section 144 Cr.P.C. is a very powerful weapon in the hands of a magistrate. Its effect is to make lawful acts unlawful. It is used chiefly during occasions of festivals and communal stress.

Two stock orders are

- (a) that no one should appear in public armed with a lathi or other weapon of offence.
- (b) that no more than five (or some such number) persons should be together in public.

Less frequently curfew orders are issued under this section. This means that nobody may leave his house within certain specified hours.

Infringement of any of these orders is punishable under Sec. 188 I.P.C

I could write a volume on the use and abuse of Sec. 144 Cr.P.C. and on the management of festivals and the maintenance of the peace. But it could not be done here.

XIII

THE QUELLING OF RIOTS

The law for dispersal of illegal assemblies and for the quelling of riots will be found in Chapter IX (Secs. 127 to 132) of the Code of Criminal Procedure. This is supplemented by rules 69 and 70 of the Police Regulations.

A magistrate or station officer of Police may command an assembly of five or more persons to disperse. He may do so even if the assembly is not technically illegal, provided it appears bent on mischief. It is not necessary to wait for the assembly to commit some overt act of violence; it should be dispersed before it can commit such act.

If it fails to obey, the assembly may be dispersed by force; if necessary by armed force.

A very unreasonable attitude is often taken up by lawyers; and sometimes also by courts when dealing with cases in which illegal assemblies have been dispersed.

I have, in communal cases, heard the most fantastic allegations made. They amount to saying that the police fired or were ordered to fire, out of pure malice. More moderate lawyers usually argue that the officer who ordered fire had 'lost his head.'

It is all very well for people without actual experience to talk like this. It is unfair to judge the conduct of an officer in the light of full knowledge of conditions and of subsequent events. With imperfect knowledge, and when a man has to decide in the fraction of a second, things look different. Fortunately no officer who disperses a mob by force, can be prosecuted for his conduct without, the sanction of the Local Government (Sec. 132 Cr. P.C.)

BOOK IV
MISCELLANEOUS OFFENCES.

PART I

FALSE EVIDENCE

I

FALSE COMPLAINTS

Section 182 I.P.C penalises false reports to a public servant, if that would lead him to do anything to the annoyance of another. It is a very wide provision of law ; and covers everything from a departmental complaint to a false charge to the police.

It is unfortunate this should be so, for the maximum punishment is six months which is really too light a punishment for false charges to the police. And to make matters worse, such cases are usually tried summarily and let off with three months' imprisonment or merely with a fine. In their desire to be rid of work, courts forget the seriousness of the offence.

A prosecution under Sec. 182. I.P.C cannot be started by the aggrieved person. It can be launched only on the complaint of the person to

whom the false report was made or by some superior of his. (S. C. 195 (1) Cr.P.C.)

I remember my district magistrate receiving a petition which he passed on to me for disposal. After enquiry I found it false, and ordered a prosecution under Sec. 182. My order was set aside on the ground that I could not usurp the right of the District Magistrate to whom the petition was addressed.

The institution of a false criminal proceeding is punishable under Sec. 211 I.P.C. A severe penalty is prescribed for it, especially if the charge was a capital one. Conceivably a false report to the police would also come under this section, since the investigation which follows might be called a criminal proceeding. But this section is seldom invoked. Sometimes I myself altered a complaint under Sec. 182 to one under Sec. 211 and this should be done whenever any serious allegation has been made.

II

FALSE CLAIMS

A false claim in a Court of Justice is punishable under Sec. 209 I.P.C. Many years ago some emigrants to Burma took to instituting false money suits there against those who had returned to India. The claims put forward were not large; and the defendants, rather than take an expensive journey, let the cases go by default. After that they could not resist execution of the decrees in India. But the culprits did this too often; and then the Criminal Investigation Department was put on their track. I remember recording some statements; but do not know how matters developed later.

The execution of a decree which has been satisfied is punishable under Sec. 210 I.P.C. A curious anomaly sometimes arises. Once a decree is passed, no payment towards it is recognised unless certified in court (Rule 2 (3) Order XXI C.P.C.) So if a decree holder ignores any such payment made to him, he can get a second payment by means of execution. But at the same time, he can be criminally prosecuted under Sec. 210 I.P.C.

III

FALSE EVIDENCE

Section 191 I. P. C. lays down that any person who is bound by express provision of law to state the truth and who does not tell the truth, if guilty of giving false evidence. It is immaterial whether he has or has not taken an oath or made a solemn affirmation. (This is made clearer by Sec. 14 of the Oaths Act.)

Section 192 I.P.C. defines fabricating false evidence. "Whoever causes any circumstance to exist, or makes any false entry in a book or record, or makes a document containing a false statement" for the purpose of use in court, fabricates false evidence. An example may be quoted. A puts jewels to B's box, intending thereby to get B convicted of theft. This is fabricating false evidence.

Sec. 193 I.P.C. is the general penal provision for perjury, or as the Indian Penal Code puts it, for giving or fabricating false evidence. When the object is to get a man convicted of serious offences, Section 195 applies. If it is to get him

convicted of a capital offence, then Sec. 194 I.P.C.; and if the innocent person is executed, then the penalty is death.

Causing disappearance of evidence (*e.g.* secret disposal of the body of murdered person) comes under Sec. 201. When a document is thus secreted or destroyed, the offence comes under Sec. 204.

IV

THE OATHS ACT

The Oaths Act (X of 1973) prescribes who may administer oaths and affirmations (Sec. 4), and who are bound to take and make them (Sec. 5).

All courts are authorised to administer oaths or (if the person so desires) solemn affirmations. All witnesses in court are bound to take or make them.

Under Sec. 14 all witnesses before a court are bound to state the truth; and the omission (whether accidental or intentional) to take an oath or make a solemn affirmation before giving evidence, does not relieve them of the obligation.

V

SANCTIONS TO PROSECUTION

No person may be prosecuted for giving or fabricating false evidence except with the sanction of the Court where the evidence was given (Secs. 195, 476 Cr.P.C.)

This is a wise precaution. For after all the truth and falsity of a statement is largely a matter of opinion. It may not be difficult to disbelieve a witness; but to convict him as an accused would require evidence not often available.

Without such a safeguard as mentioned above, no one could enter the witness-box with an easy mind. He could be prosecuted for the most trivial discrepancies (even if ultimately acquitted); and could be subjected to much blackmail.

False statements in matters of detail, irrelevant or only slightly relevant to the facts issue, should not be the basis for charges of perjury.

I would also lay down a rule that, save in exceptional circumstances, prosecutions should not be launched in respect of statements made in cross-examination. I say this as in cross-examination questions are often put in so involved or so

artful a manner that the unfortunate witness does not know how to answer, and⁷ is trapped into saying something he does not mean.

Once I had a lawyer ask a witness whether his mother was in jail when he was born. The question had no relevancy to the matter before the Court; but I was told it was meant to test the witness's veracity. This was going too far; and I disallowed the question. But even if an untruthful negative answer had been returned, it would have been an outrage to prosecute the witness for it.

The most certain cases of perjury obviously are those in which a man has made two contradictory statements. But I remember one or two occasions when I refused to sanction prosecution in such cases. The man had made a certain statement under Sec. 164 Cr.P.C. and then denied it in court. I held that the former statement was untrue; and had been made under pressure; while the latter was true.

It is not desirable to punish a man for a false statement which later he corrects.

VI

RELUCTANCE TO PROSECUTE

It certainly is a wise provision of law to safeguard against indiscriminate prosecutions for perjury. But there often is too great a reluctance on the part of courts to sanction such proceedings. Moreover many trial courts look on them as a nuisance ; and merely seek opportunities to throw them out.

In my early days I remember a court to whom I sent such a complaint, objecting to take it up because I had not previously called on the accused to show cause why he should not be prosecuted. It is of course a good thing to get the man's explanation ; but this is by no means imperative under the law (Sec. 476 Cr.P.C) Moreover since this did not vitiate my sanction, it was no business of the court of trial.

I have never hesitated to call on a false witness to show cause why he should not be prosecuted' especially if he be a man of apparent respectability. Even if a prosecution does not follow, the mere issue of such a notice has a deterrent effect.

VII

ALIBIS

An alibi, if proved, is the surest form of defence. But it is put up in almost every case; and in time one ignores it without comment—‘the usual alibi.’

The difficulty of fixing an exact time is usually insuperable. Not only does this nullify the benefit to the accused; but it allows the witness to escape in a cloud of doubt.

Only in rare cases are prosecutions for perjury successful. I shall relate one notable case tried by my father in 1910.

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The accused was a Captain in the Indian Medical Department with only a few years left for retirement.

A murder was committed in Allahabad, Captain V., who was stationed at Lucknow, deposed that he had treated the culprit there about the time of the murder. The Judge found the defence to be false. The murderers were executed.

The Captain was prosecuted for perjury, and was sentenced to six months imprisonment. The

case created a sensation in the Anglo-Indian community ; and sometimes is referred to, even after all these years.

VIII

A TRAVESTY OF JUSTICE

A man sleeping outside, was murdered one night, his throat being slashed across by a heavy chopper. Several witnesses ran up; but none before the miscreants had escaped. Some of the villagers declared that the man was living when they arrived; and that they had questioned him. They gave him a series of names; and after each, enquired if that was the person responsible. They went on to depose that the dying man waved his hand in negation, till they came to the correct name, and then he gave a gesture of assent.

This happened in the most maladministered district I have known; and the police wholeheartedly prosecuted the case. The injury inflicted on the dying man was such however that he

could not have made signs as alleged. Medically it may have been possible ; but, common sense showed it to be improbable in the highest degree. Enmity between the deponents and the man they named confirmed the suspicion. The accused were discharged.

I could not brook such perjury ; and determined to teach at least one police witness a lesson. It would have been fatal, however, to lodge a complaint in another court, as provided by Sec. 476 Cr. P. C. For in that case, the prosecution would have been left unsponsored, perhaps even have been actively opposed by the authorities. I took advantage of Sec. 437 (2) Cr. P. C. and myself committed the main witness to the Court of Session.

I charged the witness under Sec. 194 I. P. C. ; but the Judge ruled that only Sec. 193 could apply. This I did not mind ; but surely it was a travesty of justice to have sentenced the man to only six months imprisonment. One could not conceive a worse example of trying to use the courts to hang innocent people.

IX

PUBLIC OPINION

Public opinion in India scarcely attaches any moral turpitude to perjury. Is it part of the game.

An orderly of mine once naively asked my advice if he should swear to an alibi for a certain person, who promised in return, to give evidence for him in a case in which he was concerned. The moral implications did not occur to him. All he wished to know was whether he could do so safely.

Once I actually had a clerk say to me confidentially "This is not a court, that I should tell an untruth." (Yeh ijlas nahin hai ke jhut bolen). And this expression has almost become a proverb.

PART II

DEFAMATION

I

DEFAMATION

Defamation is anything which actually harms a person's reputation. Section 499 I.P.C. which defines it, is one of the longest sections in the code. It has three explanations and ten exceptions.

The following acts are not defamation :—

1. To say anything in the public interest (provided it is so)
2. To criticise the conduct of a public servant as such.
3. To criticise the conduct of any person in his relation to a public question.
4. To publish a substantially correct account of a proceeding in court.
5. To comment on a court proceeding or criticise the conduct of any party, witness or agent thereto (provided the proceeding has concluded).

6. To express an opinion on anything (e.g., a book or a performance) placed before the public.
7. To censure a subordinate.
8. To prefer a complaint against a subordinate to his superior. •
9. To make an imputation against anyone either to protect one's own interest or that of any other or for the public good.
10. To warn anyone for his good or for that of anyone in which he is interested.

The illustrations to Exceptions 5 and 7 are interesting and are quoted below :—

(i) A says “ I think Z’s evidence on that trial is so contradictory that he must be stupid or dishonest.” A is not guilty of defamation if he says this in good faith, inasmuch as the opinion which he expresses respects Z’s character as it appears in Z’s conduct as a witness, and no further.

But if A says : “ I do not believe what Z asserted at that trial because I know him to be a man without veracity ”, A is guilty of defamation,

inasmuch as the opinion which he expresses of Z's character, is an opinion not founded on Z's conduct as a witness.

(ii) A says of a book published by Z, "Z's book is foolish; Z must be a weak man. Z's book is indecent; Z must be a man of impure mind." A is not guilty of defamation, if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine," A is guilty of defamation inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

Simple defamation is punishable under Sec. 500 I.P.C.; if in writing, under Sec. 501. Anyone selling or offering for sale any defamatory publication is liable under Sec. 502 I. P.C.

No court may take cognizance of a case of defamation, except on complaint of the person defamed. Such a case can always be compounded.

Even if not compounded, there is no bar to an action for libel in the civil court.

On convicting a case for defamation, the court may order destruction of the libellous matter concerned. (Sec. 152 Cr. P. C.)

II

THE CHIPIDDI CASE

A certain Maulana, who had been awarded the titles of Shamshululama and Khan Bahadur, was a prominent citizen of a city in the east of the Province. He was of commanding personality and stentorian voice. He had a goodly following, and had won the confidence of even the Maharaja of Gwalior. At the time of which I speak, however, several of the educated Muslims of his native town were opposed to him.

The Maulana represented the third generation of a family of spiritual leaders. The tombs of his father and his grandfather were places of pilgrimage ; and the offerings made at urses or ceremonies there brought him a substantial income.

It was this which was used to bring discredit on him.

Abdul Hamid was a mild and religious old man, but not at all in the public eye. Apparently prompted by others, he issued a leaflet in which he condemned such ceremonies as idolatory, foreign to the precepts of Islam. The leaflet came to the notice of the Maulana.

After Friday prayers at the Jama Masjid he rose with this leaflet in his hand. According to his opponents, he declared that the person who had inscribed it was a kafir. On some allusion being made to Abdul Hamid, he declared that Abdul Hamid was a mere pawn—*chipiddi, chipiddi ka shorba* (a mere sparrow, in fact merely soup from a sparrow.) And he added in classic Urdu "*Koi mashuq hai is parda zangari men*" (there is a beloved behind this azure veil), implying that there were wire-pullers behind the scenes.

Abdul Hamid, when he heard of this, issued a registered notice to the Maulana demanding an apology for having been called a kafir. Though the Maulana was one of the best known men in the town, the postman declared that he had been six times to his house, and not found him. The registered notice was returned to the sender.

Abdul Hamid now had no alternative to prosecuting the Maulana for defamation under Sec. 500 I.P.C. I had just joined the district; and the case came before me. It was the only occasion when I used Sec. 205 Cr. P. C. and permitted a male accused to appear by pleader.

The Maulana denied having called Abdul Hamid a kafir. What he said was that the views propounded in Abdul Hamid's leaflet were heretical.

This raised theological problems which left me completely at sea. So far as I could see, people of the most diverse religious views claimed to be Hanifis; and it was a problem to decide what the Hanifi doctrines really were.

In the end I steered clear of these pitfalls. I accepted the Maulana's version of the story; and held that he was entitled to the benefit of exceptions 1,9 and 10 of Sec. 499 I. P. C.; in other words I held that as a religious leader, he was entitled to express his views on religious questions. The Maulana was accordingly acquitted.

The case became a cause celebre among Muslims not only in the district, but also beyond it.

But in common parlance it was known by the somewhat undignified title of 'the chipiddi case.'

III

DEFAMATION IN SWORN STATEMENTS

Section 132 of the Evidence Act is much in need of amendment. It lays down that no witness shall be excused from making a statement on the ground that it will incriminate him, provided he does so in response to a question he is bound to answer. This means that a witness must decide whether or not he is legally bound to give an answer. This is laying a heavy burden on him.

I have known cases of defamation started on such answers. As it stands the law presents the witness with the alternative of a prosecution for libel if he tells the truth, and a prosecution for perjury if he does not. The halting nature of evidence in bribery cases is a necessary consequence of this law. If the witness tells the

whole truth, he may later himself be prosecuted for bribery.

My view is that no statement made on oath should be provable against a man. There may be occasions when his statement may be a volunteered one ; or one not in direct answer to a question. But such instances will be few. And it is better to chance that than to have the present impossible law.

IV

INSULT AND INTIMIDATION

Section 504 I.P.C. penalises insults likely to cause a breach of the peace. There is a common tendency with petition writers, and sometimes even with lawyers, to describe abuse as defamation. This is quite wrong ; the proper law is Sec. 504 I.P.C.

I once had a case where a tahsil peon abused a Secretary to a Municipal Board. I imprisoned him. I remember another where an intoxicated

tahsil peon abused his Tahsildar. He was dealt with departmentally and dismissed.

There was another case where a men constantly abused a Rai Bahadur. He was not prosecuted for a particular act, but was bound over under Sec. 107 Cr.P.C. The case could have come under Sec. 504 Cr.P.C.; and will be described in the next chapter.

Criminal intimidation defined in Sec. 503 I.P.C. is a kindred offence. Section 506 is the penal section most often used; the next two sections are specialised ones.

Section 506 is invoked in almost every complaint of mar-pit; but I cannot remember a single instance when I convicted anyone of it. The intimidation must be something more than mere abuse or an idle threat; and must create a genuine apprehension.

V

UNEARTHING AN ANCIENT GRUDGE

A Rai Bahadur had served the Government for almost thirty years, all except two having been on the hills. He had risen to be a Deputy Collector ; and then retired to settle in his native town in the hills.

There happened to be living there a crazy individual, I forgot his name. He found some ancient papers from which he deduced that the ancestors of the Rai Bahadur had been slaves to his.

On this he considered himself entitled to abuse the Rai Bahadur whenever and wherever he met him. As often happens, he was encouraged by those who were jealous of the position and the influence which that gentleman had attained.

Things came to an intolerable pass. The Rai Bahadur could scarcely venture out on his daily walk, when he encountered his enemy. He complained to the authorities ; and the Police reported for action under Sec. 107 Cr.P.C.

The defence put up was an absurd one ; and I found it difficult to stop the Rai Bahadur being

insulted in my very court room. Finally the accused was bound over for a year.

Such incidents are often referred to as defamation under Sec. 500 I. P. C. But rightly they come under Sec. 504 I.P.C. that is insults likely to cause a breach of the peace. In all the circumstances of this particular case, however, action under Sec. 107 Cr.P.C. was best.

PART III

FORGERY AND COUNTERFEITING

I

FORGERY

Budaun used to be celebrated for a School for Forgery. But all the experts have now died out. When posted there recently I heard of one aged relic; but he was too scared to display his skill.

Most forgeries are clumsily made; but I had to enquire into one which (except in one particular) was well done and really serious. On that occasion I read Hardless's book on the subject. It was unfortunately without illustration; but nevertheless taught me a good deal.

When writing naturally a man usually does not lift his pen from the paper till he has completed a word. The forgerer will do so more than once to ensure the exactness of his imitation. A magnified photograph of the writing will betray this.

The spacing of words and lines are also significant, especially if written so as to fill up the exact space to spare.

The method of copying the signature is to make a tracing; and then, placing it on the required paper, to mark its outline with dots. These are then run over with a pen.

II

FORGERY OF CURRENCY NOTES AND BANK NOTES

Sections 489A to 489D were inserted in the Indian Penal Code by the Currency Notes Forgery Act (XII of 1899). They were placed in Chapter XVIII (Forgeries) instead of in Chapter XII (Counterfeiting of Coin and Stamps), as they dealt not only with Currency Notes; but also with Bank Notes.

Anyone who read what was till recently written on Currency Notes would have noticed that they were nothing but promissory notes, that is promises to pay on demand, issued by Government. Sometimes Governments delegate this

duty to recognised Banks. In India notes of denomination of five rupees or more are now issued by the Reserve Bank of India. They are therefore, 'Bank Notes.' (Explanation to Sec. 489A).

The promise to pay on demand does not appear on one-rupee notes, but being issued by Government, they are Currency Notes.

III

TRADE AND PROPERTY MARKS.

A mark used to denote that goods are the manufacture or merchandise of a particular person is called a trade-mark (Sec. 478)

A mark used to denote that moveable property belongs to a particular person is called a 'property mark' (Sec. 479)

Fabrication and use of false trade and property marks are dealt with from Sec 478 to 489 I.P.C. These offences are compoundable if they relate to private property and are not meant to deceive public officers.

These Sections are seldom invoked ; and I at least, have never known of one.

IV

THE COINAGE.

The Indian Coinage Act (III of 1906)

- (a) prescribes the weight, fineness, dimensions and designs of various coins.
- (b) lays down the law regarding legal tender.
- (c) directs certain authorities to cut or destroy diminished (that is light weight), defaced and counterfeit coin.

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Only silver, nickel and bronze coins were minted under this Act. But gold sovereigns were declared legal tender.

Since then there have been some alterations in the law, especially during the second Great War. But it is to be hoped these changes are only temporary; and so we shall not touch on them.

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The anna has always represented one-sixteenth of a rupee. But before the passing of this Act it only meant a value. There was no anna coin. The reason was that till then there was only silver and copper coinage; and it would have been

inconvenient to have a copper coin four times the size of a pice or a silver one one-fourth the size of the silver four anna piece. (The old silver two anna bit, now withdrawn from circulation, was as small a coin as there could be.)

The introduction of nickel coins solved the difficulty. But there has been a curious result, perpetrated in Sec. 6 of the Act itself. When speaking of coins, we talk of rupees, pice and pies; but never of an anna. It is always an anna piece. So the term anna still represents only a value; while the coin is an anna piece.

The nickel coinage in India is, because of its curious shapes, unique in the world. The anna is like a flower with twelve petals, the two anna a square with rounded corners.

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The Coinage Act, 1906 substituted bronze for copper coins. During the Second World War it was found necessary to reduce the intrinsic value of the pice, by boring a hole through it. This idea originated in old China; and in the modern world, was first adopted in East Africa. Those who had no purses just threaded through the holes, and so carried the coins quite easily.

The pie has always been minted. It is useful in accounts though seldom used for actual payments. The only place I saw it used for non-Governmental purposes was at Chitrakot in Banda District. Pilgrims found them convenient as cheap offerings.

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Till the middle of the last century the pie was, for purposes of value, divided into adhelas (half-pice), chhadams and damris. There were no coins representing the latter two.

A damri (i.e. one eighth of a pice) was valued in cowries. About eight or ten cowries made up a damri ; but the value fluctuated. A kana cowrie, that is one with a blemish, was not 'legal tender.'

But now those days are only a distant memory, which very few remember.

V

COUNTERFEITING COIN, CURRENCY NOTES AND GOVERNMENT STAMPS

Counterfeiting of coin and Government Stamps is dealt with under Chapter XII of the Indian

Penal Code. Till as late as 1899 there was no special penalty for counterfeiting currency notes. Only the forgery sections had been available for such offences. Then four sections were inserted in the Indian Penal Code, but instead of placing them in Chapter XII, they were added as sections 429A to 489D in the Chapter relating to forgery.

I have never had counterfeiting cases before me, though I have occasionally seen false coin, usually crudely made. I have frequently noticed the names of counterfeiters under surveillance at police stations. To the best of my knowledge, this business however is never carried on on a wholesale scale.

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There are a few sections in Chapter XII which concern the ordinary man.

Passing off counterfeit coin comes under Sec. 241 and may be punished with fine alone. But anyone deliberately receiving counterfeit coin (Secs. 242, 245) and then passing it on (Secs. 239, 240) must be imprisoned. (The corresponding provisions for currency notes are Sections 489B and 489C).

Section 262 penalises the use of stamps already used ; Section 263 deals with attempts to erase

post-marks. Off and on I have had reports of such cases; but it has never been my lot to try one.

VI

WEIGHTS AND MEASURES

The lack of uniformity in weights and measures is very surprising, especially in weights. Every district has its own standards. It is a strange idea, instead of using a standard weight for all purposes, to vary it according to the locality, the commodity, and whether the transaction is retail or wholesale.

In Azamgarh District (where I spent a long while) the following local seers were in use. (The figures indicate the number of tolas in the seer.)

Commodity	Retail	Wholesale
Grain	96, 104, 105	112, 118, 120, 128
Sugar	80	105
Hardware	84, 88	84, 88
Metal		
Cotton thread		
Spices		

The Azamgarh Municipal Board passed a bye-law enforcing the use of the standard seer; but then made every effort to get back to the old weight. The reason was that importers insisted on selling at the same rate per seer every where, whatever the actual weight of the seer. I tried hard to have the standard seer adopted throughout the district. I even persuaded the District Board to pass such a bye-law; but Government would not sanction it.

At Sagri I found large quantities of grain imported from the rail-head and river-port of Dohrighat, some sixteen miles away. (Both places are in Azamgarh district). I was mystified to find it sold at exactly the same rate in both places. On enquiring what profit it was to the merchants, I learnt that the Dohrighat seer was several tolas heavier than the one in Sagri.

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In the matter of measures also there were differences, but not as great as in the case of weights. The Azamgarh Municipality passed a bye-law enforcing the use of the standard yard of sixteen girahs; but later wished to get back to a longer yard. I strongly resisted this.

VII

STANDARD WEIGHTS AND MEASURES

There are three statutes creating standard weights and measures.

1. The Measures of Length Act (III of 1899).
2. Weights and Measures of Capacity Act (XXX of 1871).
3. Standards of Weight Act (IX of 1939).

The third repealed the portion of the second which related to standard weights.

These Acts, however, merely prescribed standards; and left it to Local Governments to enforce them when and where deemed necessary.

The Local Government has always been reluctant to enforce the use of standard weights and measures. But the obvious difficulties in the way of price control, has compelled it to pass the U. P. Standard Weights Enforcement Order, 1944. This has now been enforced in 45 out of the 48 districts. Even this is a mere war measure; but will, it is to be hoped, be made permanent.

The penal law with regard to weights and measures is found in Chapter XIII (Secs. 264 to 267 I.P.C.) Anyone making, using or even possessing a false measure of length, or a false weight, or false instrument for weighing is liable to punishment. But the falseness of a weight or a measure is determined by relation, not to the standard, but to the one legally in use in the locality, whether by custom or by law.

Under Sec. 153 Cr.P.C. a station officer of police may enter any place within his circle to inspect and search for false weights, measures and instruments of weighing; and if any such are found he may seize them. The offence being non-cognizable, however, he may only report to the Magistrate for orders.

PART IV

RELIGION AND MORALITY

I

OFFENCE AGAINST RELIGION

Chapter XV of the Indian Penal Code deals with offences against religion. It consists of only five sections, all penal ones. They are as follows :—

295 —Defilement of religious places.

295A—Outraging religious feelings.

296 —Disturbance of religious assemblies.

297 —Trespass on places of worship and places of sepulture.

298—Offending religious sentiments.

The last mentioned is a compoundable offence.

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Section 295A was inserted in the Code only in 1927; and its origin is interesting.

A satire on the Muslim prophet had been published. It was entitled the *Rangila Rasul*; and “its tone was undoubtedly malicious and

likely to wound the religious feelings of the Muslim community."

The publisher was prosecuted and convicted under Section 153A I.P.C., that is for creating disaffection between classes.

The Lahore High Court held that that section was not meant to stop polemics against deceased religious leaders, however scurrilous and in bad taste such attacks might be.

The law apparently then had no provision to punish such an act; and it was to meet this deficiency that Section 295A was introduced into the Indian Penal Code.

II

TRESPASS ON CEMETERIES.

An Anglo-Indian whom I know very well in his youth migrated to Bombay. He got friendly with a gullible old Parsi; and persuaded him to believe that he could call up spirits. He then took into confidence the care-taker of a Catholic

cemetery. It was arranged that the care-taker, clad in white, should wait in an empty grave; and should rise slowly when the Anglo-Indian invoked him.

At midnight the Anglo-Indian and the Parsi arrived with two others. The party approached the grave, the Anglo-Indian muttering incantations. Finally he called 'Arise Gerard' (Gerard was supposed to be the name of the spirit). But instead of the care-taker, there rose from the empty grave some policeman, to whom he had disclosed the conspiracy.

The Anglo-Indian and two others (not the old Parsi) were arrested; and charged under Section 296, 297 I. P. C. Also for cheating the Parsi. There was most scandalous delay in the disposal of the case; but finally the court held that Secs. 295 and 297 did not apply.

As to the charge of cheating, the old Parsi denied having paid any money. Nevertheless the court held a charge proven under Sec. 417 I.P.C.; and fined the Anglo-Indian a hundred rupees. This too was scarcely right. On the evidence the Anglo-Indian had been guilty merely of a

prank. There was no dishonesty or fraud; nor could the Parsi have suffered in mind, body, reputation or property (vide definition of cheating in Sec. 415 I.P.C.)

It was during Dashera that some mischievous julahas buried a dead Muslim beneath a chabutra used to enthrone the personations of the Hindu deities.

A dangerous situation arose. The body could not be allowed to stay there. But the only law empowering magistrates to disinter dead bodies was Sec. 176 (2) Cr.P.C.; and that applied only when the cause of death had been suspicious. This was not the case here.

My right course would have been action under Sec. 133 Cr.P.C. promptly followed by action under Section 142 Cr.P.C. But this might have provoked a riot. Speed and secrecy were essential. I had the body removed at dead of night by executive order to the Police.

†Technically I suppose I could have been liable under Sec. 297 I.P.C.; but even that is doubtful,

for my action was quite *bona fide* and not meant to offend or insult anyone's feelings;

III

BIGAMY

Chapter XX of the Indian Penal Code deals with offences relating to Marriage.

The principal penal Section, 494, deals with what is ordinarily described as bigamy. The two following sections are slight variations of this.

No charge under Chapter XX [may be brought except on the complaint of the aggrieved person. (Sec. 193 Cr.P.C.) A case under Sec. 494 is compoundable with the permission of the court; but not if under the two sections which follow.

Section 497 (adultery) and 498 (enticement) have been dealt with elsewhere.

IV

OBSCENITIES

The mere making or possession of obscene pictures and literature, and the private singing of obscene songs is not illegal.

But it is illegal to sell or distribute obscene literature (Secs. 292, 293 I.P.C.). A court recording a conviction may order its destruction (Sec. 521 Cr.P.C.).

The public singing of obscene songs and the public exhibition of obscene acts is also punishable (Sec. 294 I.P.C.). But this has to be passed over during Holi, when such acts and songs have, by long established custom, become almost a religious rite.

The Holi festival takes place at the full moon nearest to the vernal equinox, a period, so I have been told, suitable to working off all excess of stored up evil thoughts and feelings.

V

GAMBLING

³The Indian Penal Code did not bring gambling within its purview. The public Gambling Act (III of 1867) was passed to supply this deficiency. The definitions of 'gaming' and 'common gaming house' have been greatly enlarged by U. P. Act I of 1917

For legal purposes, gambling is of two kinds—that done in public (Sec. 13) and that done indoors (Secs. 4 and 5). As regards the former the Act is in force everywhere; as regards the latter, it has to be specifically extended to particular localities, and has been so extended to all municipalities, cantonments, notified areas, and to many other places.

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Within doors gambling is an offence only if the owner of the house takes a pool. Were this not so, most clubs would be gambling dens.

If a magistrate receives credible information that any place is being used as a public gaming house, he may issue a warrant for it to be raided. If, when it is raided, people are found there with

money, cards, dice or other implements of gaming, the court has to presume that it was a public gaming house, and that every person found there was gambling, (Sec. 4). It is then, not for the prosecution to prove their guilt, but for them to prove their innocence. This may sound unfair ; but were it otherwise no conviction for gambling would be possible.

My practice was to imprison the keeper of the house and to fine the rest.

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As already mentioned gambling in public is always an offence ; but there can be no presumptions. In a hill station I daily passed people playing cards on the roadside, and I strongly suspected they were doing so for money. But the police could do nothing, as they kept no money on themselves, and kept merely mental notes of their accounts.

Under Sec. 13 it is also illegal to set birds and animals to fight with each other in public ; and in such cases it is not necessary to prove that this was being done for money.

VI

BETTING AND LOTTERIES

Mere betting is not an offence under the Indian Gambling Act. But in the United Provinces (Act I of 1917) gaming has been defined to include wagering and betting. An exception is, however, made for wagering and betting at horse-races, provided it takes place on the day of the race and within the recognised enclosure.

Under Sec. 30 of the Contract Act (IX of 1872), agreements by way of wager are void. But an exception is made in the case of sums exceeding Rs. 500 promised towards rewards for winning horses. For these a suit may be brought.

Akin to the law of gambling is Sec. 294A I.P.C. which penalises public lotteries. But for such a prosecution the sanction of Government is required. (Sec. 196 Cr. P.C.)

VII

DEWALI

Gambling is a traditional custom, and almost a religious rite, during Dewali. In one city I heard the doctrine that any Hindu who did not do so, would be born a musk-rat in his next incarnation. The real idea behind it appears to be to provide a suitable time to work off all gambling instincts.

It is not right policy to interfere with gaming within houses during Dewali. If any such cases do come up, they should be filed under Sec. 249 Cr. P. C., that is without orders of either conviction or acquittal.

PART V

ABETMENT, ATTEMPT AND CONSPIRACY

I

ABETMENT

Abetments are punishable under Sec. 109 I.P.C. to the same extent as the actual offence. This Section governs abetments of all offences whether under the Indian Penal Code or under any special or local law. (Vide definition of 'Offence' in Sec. 40 I.P.C.)

A little known law is Sec. 117 I.P.C. It deals with inciting the public, and not merely individuals, to commit illegal acts.

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If an abettor is present when the act is committed he is considered guilty of the actual offence. (Sec. 114 I.P.C.)

When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in

· the same manner as if it were done by him alone.
(Sec. 34 I.P.C.)^f

When in the course of a riot any of the rioters does an act in pursuance of the common object, everyone of his fellows is held responsible for that act and is punishable for it. (Sec. 149 I.P.C.)

If in the course of a robbery or dacoity, any of the culprits causes hurt or murder, all his accomplices are punishable in the same manner as he. (Secs. 394 and 296 I.P.C.) The same principle applies in cases of house-breaking by night. (Sec. 460 I.P.C.)

II

CONSPIRACY

The conspiracy sections (Secs. 120A and 120B) were introduced into the Indian Penal Code only in 1913. They cannot be used without the sanction of either Government or the District Magistrate, according as the offence is serious or not.

If the conspiracy is in connection with a court proceeding, only the sanction of the court concerned is required. I have given such sanction only once. It was in the celebrated Kunwarpur Forgery Case which I shall deal with later.

These sections, refer only to conspiracies to commit offences under the Indian Penal Code. So a conspiracy to commit an Excise Offence is not punishable.

A conspiracy is punishable in the same way as the actual offence ; unless the offence is a minor one, in which case six months is the maximum. The anomaly is that the moment a conspirator makes an attempt to commit the offence, his punishment is halved.

A charge of conspiracy may be tried only by a First Class Magistrate or Sessions Judge.

III

ATTEMPTS

Attempts to commit offences are punishable under Sec. 511 I.P.C., unless some special provision

exists. But to bring an attempt within the law, some act must be performed towards the commission of an offence.

This section governs attempts to commit offences under the Indian Penal Code only. A mere attempt to commit an excise offence is therefore not punishable.

There are special clauses for attempts at murder (307), homicide not amounting to murder (308), suicide (309), robbery (393), dacoity (398). Mere preparation to commit a dacoity is also punishable (399).

Attempts are punishable with half the punishment for the actual offence.

IV

SOME CURIOUS RESULTS

The definition of force in Sec. 349 I.P.C. is almost amusing in its scientific precision. Under Sec. 330 Force becomes criminal force, if used for any unlawful purpose. 'Assault' (Section 381)

is a gesture or preparation for applying criminal force. Mere words are not an assault. (Explanation to Sec. 351).

In conversation one sometimes hears the expression "attempted assault"; but legally there can be no such thing. For an assault is a mere gesture or preparation; and it is no preparation for it, merely to utter words or to make grimaces.

An attempt at suicide is punishable under Sec. 309 I.P.C. Abetment of suicide is punishable under Sec. 306 I.P.C. But under the law as it stands, there is no punishment for a conspiracy to commit suicide.

As for suicide itself, that is not an offence at all. A case under Sec. 309 (attempted suicide) is expunged no sooner a man dies. This may sound strange; but a little thought will show that it could not be otherwise.

V

OBSOLETE AND LITTLE USED SECTIONS

Section 370 I.P.C. deals with importing, exporting, removing, buying, selling and disposing of slaves ; Section 371 with doing so habitually.

Since no one can be a slave on British soil, it is difficult to see how such offences can now be committed. The one case I have read of, was when a man was foolish enough to accept a consideration for sale of his supposed rights to a girl. It is true he described her as a slave; but she could have been no such thing. It might have been cheating. Nevertheless the High Court held that an offence under Sec. 370 had been committed.

Section 374 deals with unlawful compulsory labour. I have on rare occasions had such complaints brought before me; but on not a single occasion did the case proceed far. Technical offences of this kind are sometimes committed in rural and backward areas; but they are most difficult to establish. There is a ruling that insistence

on the performance of a contract does not come under this section.

Chapter XIX (Section 490 to 492) I.P.C. deals with Criminal Breaches of Contract of Service. This law is almost literally never invoked ; and after twenty-five years of service I had quite forgotten of its existence. Then at Banda a petition was presented to me under Sec. 491 (breach of contract to attend on and supply wants of helpless person). I sent for the petition-writer who had unearthed the section ; and metaphorically patted him on the back. But the case went by default a few days later.

VI

TORTS

Any wrong, not arising out of contract, for which compensation may be awarded by a court of law is known as a tort. There is no codified law of torts in British India ; but some times such suits are lodged. They are usually described as

suits for damages. Such suits may be lodged instead of, or in addition to, criminal actions. Though they may take longer and are more expensive, the result is, on the whole, more satisfactory to the plaintiff.

In the hill districts, Magistrates also deal with civil suits. I had at least three between Europeans.

I remember one as the only case I tried in which the entire evidence was in English.

In another a retired General brought a seemingly aimless action against a widowed house-owner. He complained that she had, against the practice of the station, not renewed the leases for the bungalow he had occupied one year. The suit failed, of course; and the General did not bother. I was told later that his real motive was to escape income-tax in England, by thus proving himself a resident of India.

VII

A SUIT FOR DAMAGE

The plaintiff had been a cavalryman, who had suffered from shell-shock during the First World War. He took his discharge in India; and married a lady who kept a hotel in the hills. The hotel catered chiefly for military officers and their families; and was subject to inspection by the senior military medical officer.

One of the guests was the wife of a medical captain; and she had a very bad temper. Like so many ladies, nothing satisfied her; and one morning she announced her intention of leaving the place at once. She sent for coolies; and they were removing her luggage, when the ex-cavalryman stopped them. There is an unwritten law that a hotel keeper may forbid removal of a boarder's effects, till he has paid his bill.

The medical captain's wife came out on hearing the squabble. She went up to the ex-cavalryman, gave him a stunning slap across his cheek, and bade the coolies proceed. The ex-cavalryman, who had never got over his shell-shock, sat dazed till they had gone.

. His counsel wisely advised him to sue for damages rather than lodge a criminal petition. When this became known, the senior medical officer of the station visited the hotel and condemned the sanitation. The plaintiff declared that this was merely meant to bring pressure on him to withdraw his suit; and so indeed it was. In court some unnecessary evidence was also put forward regarding the suitability of the meals. But all this was besides the point.

The defence put forward the story that the silly ex-cavalary man had put his tongue out at the lady, and that that had caused her to slap him. The facts were however quite clear; and two hundred rupees was decreed as compensation.

The lady defendant had, in the meanwhile, returned to the plains. The decree was transferred there for execution. When the bailiff (that is the kurk amin) arrived, she obstructed him. Only when summoned to court again, did she come to her senses.

BOOK V

BRIBERY AND CORRUPTION

PART

ANALYSIS OF CORRUPTION

I

AN ANALYSIS OF CORRUPTION

The evil of corruption exists principally among those who draw salaries below Rs. 100 a month. This is not due to any innate dishonesty on the part of low-paid officials. It is because they cannot make ends meet with the pittance on which they are expected to support themselves. It is all very well for those drawing salaries running into three and four figures to moralise. Only the low-paid official with opportunities for money-making knows what it is to resist temptation. And he would be more than human, did he not succumb. So any treatment of the evil which does not improve the income of the subordinate, cannot but be symptomatic and of ephemeral value.

Corruption may be classified as follows :—

1. Rewards ... Harmless
2. Do. ... Harmful
3. Extortion.

In the first category I include mere tipping, which exists all the world over. It is a nuisance; but no machine can run without a lubricant. It can never be eradicated. Any measures to do so, will, in the words of a Secretariat Officer, be “as ineffectual as a dose of Epsom Salts to a wooden horse.” My view is that we need take no notice of such ‘corruption,’ unless a specific complaint is made, or unless it shades into blackmail.

A typical instance of the second category would be if a patwari made a false entry benefiting one man and harming another. Such cases are sporadic. They come to light in the course of inspections and other proceedings; and can be dealt with departmentally.

The third category is, of course, the most serious. But an official habituated to it, soon becomes known; and then the only thing to do is to mark him down, and catch him.

II

SOME GENERAL REMARKS

Cases of bribery are not easy to prove ; as the law punishes the man who pays as well as the man who accepts. And even on an assurance of immunity, the man who pays will not complain if he has had adequate return for his money. An assurance of immunity is scarcely legal ; and so long as the law of Evidence (Sec. 132) is not amended witnesses in cases of bribery will continue to depose in a halting manner.

It is not generally realised that the law of bribery and corruption laid down in Chapter IX of the Indian Penal Code, concerns only public servants as defined in Sec. 21 of that Code. As railway servants did not come within that definition, they were so created by Sec. 137 of the Railway Act. Similar clauses exist in the District Board Act and Municipal Act (Sec. 89 Act X of 1922 and Sec. 84 Act II of 1916).

、 An employee of the Court of Wards is not a public servant. So, though certainly liable to

departmental punishment, he cannot be convicted of corruption under the Indian Penal Code.

Private servants are in a similar position. In other words, a man serving a private employer, cannot be prosecuted for bribery, even if he takes money to deceive his master.

III

THE PATWARI—PART

SOME FALSE NOTIONS

It is related that a Commissioner once paid a visit to a district in which he had started life as a young assistant magistrate. One of his old acquaintances, who had been a big zamindar though now fallen on evil days, called on him. He invoked the blessing of Heaven on the Commissioner. "May you", he said, "rise to be Governor, and after that to be Governor-General; and after that I hope you will rise to be a Patwari."

Such is the common repute of the Patwari. His pen is regarded as invincible. He has the power of a giant; and like a giant he uses it.

Vague allegations are sometimes made that through an insidious doctoring of the village records, the Patwari has destroyed the rights of many a tenant and many a zamindar.

Instances like these may be—very possibly actually have been. But they are the rare exceptions and not the frequent rule. A partal of the village will show that perhaps less than one entry in a hundred is erroneous. It is not often that an inspecting officer—be he kanungo, tahsildar or sub-divisional officer—is able to detect more than a clerical error in the khasra and other papers, whether checked on the spot or in the camp.

It is only in one case in a hundred that the period of a tenant's cultivation is found to disagree with the evidence of the twelve years abstract of khasras and of khataunis obtained from the record room; even if the office of Patwari has changed hands frequently during the interim.

Contrary to most officers, I have great sympathy with patwaris. Very unfair views prevail regarding their records. The misdemeanours of a few are taken to be typical of all. But when viewed in wider perspective it must be conceded that their records are really remarkable for their

accuracy. As a body our Patwaris are an extremely hard-worked lot, albeit very much maligned.

And it is a marvel that this should be so; for apart from their meagre emoluments, their difficulties are manifold.

IV

THE PATWARI—PART II.

HIS TROUBLES

The troubles of a patwari commence from the very hour he asks for appointment. It is a pernicious law which requires his appointment to rest on nomination by his zamindars. The vast majority of zamindars, do not give this nomination for nothing. In the eastern districts, I have known contests between rival candidates, which are carried up to the Comissioner, and on which hundreds are spent. All that has to be recouped.

The rules for residence within a circle are often interpreted with unreasonable severity. Nothing short of the purchase of a house satisfies the authorities that the patwari is resident within

his circle. This, coming on top of the expenses for securing nomination, would send most poor people insolvent. Officers who flippantly transfer patwaris, little realise the severity of the order, for it means he has to purchase yet another house in his new circle.

The duties of a patwari are often onerous beyond endurance. Every department has need of him. Lengthy and complicated statements have often to be compiled. At one time complete copies of khataunis had to be prepared for the Court of Wards. Even the normal duties of a patwari are heavy. This is especially so in the permanently districts. An enquiry I made in Ghazipur showed that they were expected to turn out twice, and often more than twice, the standard amount of work. In calculating the amount of work done, statistics were prepared in a most illogical manner. For example a khata was reckoned a unit, whether it consisted of one name or of fifty. Periods of settlement and revision are a time of dire tribulation for the entire land records staff. The last drop of blood is squeezed out of them.

And yet infallibility is expected of the patwari. The most trivial faults are punished with at least a warning; and every warning is noted in their rolls. The rolls are thus rapidly reduced to an unsightly mess; and all chances of future preferment are ruined.

The most draconic punishments are inflicted on patwaris. Under the rules they can be fined up to three months' salary. I have often known this done; as for fining of one month's salary that is of frequent occurrence. When officers impose such sentences; do they realise how *they* would make ends meet if they drew no salary for such periods.

There is too great a readiness to listen to complaints against patwaris; and even to take action against them before such complaints are investigated. I have known officers suspending patwaris no sooner a complaint is received. And he remains under suspension while leisurely enquiries are made. Till recently patwaris drew no suspension allowance. Is it not asking too much of them, to be honest when re-instated?

My own policy, which I insist is the right one, was to take no action against a patwari, unless and until an entry made by him is proved incorrect; and even then to avoid disproportionate punishment. Unfortunately however there is an unwritten rule that alone among servants of Government, a patwari must never be supported. Nothing whatever is done to improve the morale of the service.

Nor are there any prospects which give a patwari an incentive for good work. He can look forward to no pension. Grade promotion is so slow and so meagre that it means nothing. The only higher appointments open to them are those of assistant registrar kanungo. And those are often given to outsiders out of pure favouritism. When a patwari *is* so promoted, the rules are usually so worked that he never gets higher than the lowest grade in the Collectorate cadre.

The patwari also has illegal burdens to bear; but which he dare not admit. He has to pay a fixed contribution to his supervisor kanungo, and also to the registrar kanungo. In most districts

the supervisor takes one month's salary per annum. I had got used to hearing this ; but in a district I served in recently I found it was two months' salary per annum. This shocked me and I called in the Anti-Corruption Department. But nothing could be proved.

More recently I have known of one (and perhaps two) superior officers who squeezed patwaris. One adopted the simple device of transferring them, if they did not rise to expectations. I am glad to say he has been reverted to his substantative post.

V

THE PATWARI—PART III

CORRUPTION AND ITS REMEDY

I can think of only two methods whereby a patwari can make money, One is in the matter of takavi, especially takavi under Act XII. Another is the interpolation of kabiz and shikmi entries.

As regards the first it is mostly a case of tipping, which comes under the first of the three categories into which I have divided corruption. This evil is, I believe, much exaggerated; and such payments are seldom, if ever, resented.

The second method of money-making is more serious. There are black sheep in every flock; but I do not believe this method is as widely prevalent as is sometimes supposed. All that can be said in this matter is that when such cases are discovered they should be suitably dealt with.

Apart from this, patwaris accept remuneration for advice and clerical work; but this is not corruption. They may also, with permission, cultivate.

The true remedies for corruption amongst patwaris are as follows :—

1. Their appointment should not depend on nomination by zamindars.
2. The rules of residence within their circles must be more reasonably interpreted.

3. Their work must be reduced, especially by abolishing the useless *siyaha* and grain rent ledger.
4. Mere warnings should not be noted in their rolls, unless especially so ordered.
5. The punishment of fine should be abolished as in the case of every other ministerial service.
6. No period of suspension should exceed three months.
7. All posts of Assistant Registrar Kanungos and Registrar Kanungo should be reserved for promoted patwaris.
8. Patwaris should be more freely promoted to the post of supervisor Kanungos.

Considering how closely their work concerns the economic welfare of the country, the Land Records Department receives very step-motherly treatment from Government. All that can be done should be done to improve the morale of Kanungos and Patwaris.

VI

THE COLLECTORATE

I believe the ministerial staff in the Collectorate is more poorly paid than in departmental offices. I have sometimes wondered whether this was done on purpose. The fact remains, however, that every entrant counts on something more than his bare salary.

For the most part, this money-making is of the 'Harmless' type. A copyist receives something for expediting a copy; a reader or ahlmad for especially drawing the attention of the court to a particular matter; an excise or arms clerk for attending immediately to a licensee. Most of this is paid cheerfully. The official who becomes too grasping soon becomes known; and then it is time to deal with him.

There are occasions, when dishonesty is forced on a clerk, by the very conditions under which he serves. In Ghazipur District several years ago I made a detailed examination of the work done by the Wasilbaqi-navis and the Judicial Mohurrit in Saidpur Tahsil. I discovered that according to the

Pike Scheme (where a scale of work was laid down in 1910) the work done by each required between two and three men. And the Pike Scheme had been recognised by the Government resolution thereon, to have prescribed too stringent a scale !

This meant that these unfortunate officials, to keep their work up to date, should work twenty-four hours a day. How they managed it was an open secret ; they each employed a private assistant, sometimes two.

I believe I was the only one who ever put the matter baldly. The clerk is faced with two alternatives. Either he must be honest, and let the work fall into hopeless arrears, in which case his dismissal is certain ; or he may seemingly work a miracle by employing private assistants, in which case he may get away with it. Can we blame him if he adopts the latter alternative ?

But the point is that when a clerk on Rs. 45 a month employs one or two private assistants, each on at least 10 or 15 rupees a month, how is he going to make ends meet. I pressed for extra staff ; but to no purpose.

When the Congress Government came into power, certain gentlemen openly announced their intention of trapping corrupt officials. The Collectorate clerks in the district to which I was then posted met in conference, and resolved for some months at least to take no gratuities. The result was not altogether beneficial to the public. For example, a litigant desiring some information regarding a file, could formerly get it in five minutes on a payment of perhaps eight annas. Now he had to engage a lawyer to apply for search, and then apply for inspection. It took a minimum of two days, and cost the litigant a minimum of five rupees. I believe that even among the legal profession, there were many, who regretted the change.

VII

ORDERLIES AND PROCESS-SERVERS

The number of mulaqatis (at any rate to subdivisional officers) is now nothing compared to

what it once was. Some of them still tip orderlies; but the practice is decreasing rapidly. To prevent chaprasi oppressing visitors, I made it a rule that no matter what I was doing, a visitor had to be announced immediately, even if I could not interview him at once. For a district officer this is not so easy; but all names should be noted on a mulaqati register as soon as a visitor arrives.

There is another matter, which could prove more serious. In some places I found that when petitions were called, the orderly went into the verandah and collected them. This is not right. Petitioners should personally present their applications to the court; and not depart till orders are passed on them.

Frequently a winning party gives a chaprasi bakshish. This comes under the first of the three categories into which I classified corruption; and I need say no more regarding it.

Tahsil peons usually make money on service of summonses. If they merely take for true service

from the party which has had the process issued, nothing need be said. But matters become reprehensible, if the opposite party pays for a report that he could not be found.

To prevent this it is a good idea to call on a peon to explain if more than a certain proportion (say 20%) of processes issued to him are not personally served.

The dignity of a tahsil peon is now a matter of the past. I had an old orderly who told me how he used to keep a pony for his work. Few zamindars paid willingly, and had usually to be beaten before they did so. Nevertheless they would entertain the peon hospitably; and give him a rupee as bakshish before he left. It used to be said that it was beneath the dignity of a zamindar to pay revenue till he had been thrashed.

VIII

THE POLICE—PART I

LEFT-HANDED JUSTICE

It has to be admitted that the chief complaints of corruption (in the sense that they are oppressive to the public) are made against the police.

A man making a non-cognisable report usually pays a rupee to the head mohurrir. This is willingly paid. If not, the complainant may be unnecessarily detained. As regards this, all I wish to say that unless an officer becomes too grasping, it will serve little purpose to interfere. As I have remarked before, no machinery can be run without a lubricant.

I knew of a city, where the police frequently became aware of abortions; but burked the cases for a consideration. One wonders whether this was not for the best. The culprit was punished, without the glare of publicity.

Only very bad officers now accept bribes when investigating serious cases. There are

exceptions, of course ; but when money is taken for spoiling cases, the matter always comes to light. Departmental action can then be taken ; judicial action has little chance of success.

I believe money is chiefly taken when the police find the culprit, but cannot find sufficient evidence to put him on trial. In the course of a confession I recorded many years ago, I learnt of a bribe taken in a murder case. The confessor was known to be the murderer, but there could be no evidence against him. The story has been told before ; but will be repeated in a later chapter.

This I have heard described as left-handed justice. And it has its advantages. The culprit is punished informally ; it is the only way of punishing him. The investigating officer gains. The administration does not suffer.

IX

THE POLICE—PART II

OBJECTIONABLE METHODS

Often, however, bribery savours of extortion. I remember a bad case. A certain Raja had been

ailing for a long time; but his death came somewhat unexpectedly. The local thanadar (a very competent officer) proceeded to the residence immediately; and, after expressing his condolences, remarked that it would be his painful duty to send the body for post-mortem. He was paid two thousand rupees on the spot.

I was exceedingly annoyed when I heard of this. But it was all said in whispers; and I do not know if the information ever reached higher authorities. In any case, it would have been difficult to prove anything. The only action which could have been taken, would have been to transfer the station officer, and then institute a confidential enquiry, making it plain to the bribe-giver that he would not be prosecuted.

Many years ago a certain rais was being shikared by the police. His friend, another rais and an Honorary Magistrate, complained to me of this. I bade him advise his friend not to yield to such importunities. To this I received the following remarkable reply, "Well, if he does not pay the police, he will be prosecuted; and shall have to pay the lawyers instead."

X

THE POLICE—PART III

WHOLESALE ARRESTS

There is another method of making money, unhappily too frequent in some districts. It is the method of making wholesale arrests. A dacoity or riot is committed. Numerous arrests are made, some on the flimsiest pretexts. Some are made for a consideration paid by the man's enemies. Others are arrested in hopes, that money may be squeezed out of them before they are released, as they ultimately must be.

I have had experience of two very bad cases of this description. The first was in 1919. The police officer arrested 123 men for dacoity; and would have gone up to 200 had I not put the brake on. I was requested to keep them in custody for six months, for so big an investigation could not be completed sooner. This I resolutely declined to do; and then the case frizzled out. Thirteen men were prosecuted for dacoity; and I was asked to proceed against the remaining 110 for bad livelihood under section 110

Cr.P.C. I regret to say that despite my strong protest, the offending officer was not merely not punished, but was actually encouraged by his superiors. This story is more fully told in another chapter.

The other case came before me some nine years later. That too was connected with a dacoity. For months the sub-inspector was rampant in the circle arresting wholesale. A credible rumour went that he had secured bribes approaching in value nearly five figures. The highest authorities in the district, however, applauded the strong officer; and charged me with weakness. Not till after my transfer from the district was the truth discovered; and then the officer was dismissed, though re-instated on appeal.

I am happy to say, however, that except in these two cases, and in a communal case I had in Rohilkhand I have come across no case of wholesale police *zulm*.

XI

SUPERIOR OFFICERS

I have already expressed the belief that dishonesty is rare among officers drawing over Rs. 100 a month. Since the revision of salaries about 1920, I believe that only a minute fraction of gazetted officers remain corrupt. This is not due to any innate honesty on the part of the superior officer ; it is merely because he has enough to live on. It is a matter of history that the superior services were exceedingly corrupt till Lord Clive increased their emoluments to a level previously unheard of.

It would be idle to insist however that there are no corrupt people in the higher ranks of Government service.* For such there should be no mercy ; for their corruption is not because of necessity, but from choice. Such officers quickly become known. And then the only thing to do is to transfer them ; and then to institute an enquiry, first confidential, and then open. And, of course, the bribe-giver must be assured of a pardon.

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* The number has increased greatly during these days of 'Control.'

I have sometimes heard complaints about dalis. These however, are of trivial value, and the custom of presenting them has, since I joined service in 1912, diminished to less than one-eighth of what it was.

Anent the question of complimentary payments, I beg pardon for mentioning the following facts. In a certain district where I served, was a very large estate. The budget of the estate provided for annual nazrana to all officers from patwaris up to the sub-divisional officer. I know a Tahsildar who refused to accept his share; I also heard of sub-divisional officers who had accepted theirs. (To satisfy the curious I might mention that nothing ever was offered to me.)

When the officials of the estate were asked why this nazrana stopped with the sub-divisional officer, they denied it was so. The District Officer lived in a bungalow belonging to the estate, and paid for it a rent not raised since the Mutiny. The estate employed four malis for his garden. It also permanently placed a carriage and pair (all expenses paid by the estate) at the disposal of the District Officer. All this, if worked out, came to about Rs. 1,000 a year, perhaps more.

PART II

CASES OF CORRUPTION.

I

THE ART OF BRIBERY AND CORRUPTION

Bribery is regarded as an art. I have heard it said that no fool should dabble in it. One hears interesting tales of how money can be made. Here is one.

A certain notoriously corrupt official was put up before the king. He said he could make money anywhere. The king determined to make him eat his own words. He banished him to the sea-side; and put him on to the job of counting the waves.

After a few months the official returned with several lakhs. The king was astonished; and asked how this had been done. The process had been quite simple. He had stopped every ship which had passed that way as it disturbed the waves. Only after substantial toll was paid, was it allowed to pass.

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The old Greeks had a saying "First acquire an independent income, and then follow the pursuit of virtue."

II

AN OLD DAY TALE

I have sometimes remarked that dishonesty is now so rare among deputy collectors and civil judges that honesty has ceased to be reckoned a virtue. It was not so in the nineteenth century however; and I heard the following story from a retired district officer, who had in his very early days heard it from the hero himself. The hero, when he told the tale, was a deputy collector; but had risen to that rank from the police. In the days to which the story refers he had been a sub-inspector. He told the story as though it were a clever piece of work of which he should be proud.

The sub-inspector learnt of a case of abortion in the house of a wealthy family. It could scarcely be proved; but he determined to squeeze the

utmost he could from the Seth. He got in league, with the peshkar or reader, to the Superintendent of Police, who, in those days used to be a head constable. An anonymous letter was received in the office, reporting the incident. The peshi head constable who opened the vernacular dak recorded on it an order to the sub-inspector directing him to investigate. This was put up with a heap of vernacular papers, and the Superintendent of Police signed the order as a matter of routine. The peshkar then placed a fictitious office number on the paper, and personally handed it to the sub-inspector.

The sub-inspector called the Seth, showed him the order, and intimated his intention of arresting him forthwith. The Seth offered him a solatium, if he desisted; but the sub-inspector pointed out, that it would be dangerous for him to burke an enquiry after the Superintendent of Police had ordered it. After some discussion the sub-inspector hinted that the Superintendent of Police was at times himself open to influence; but the consideration would have to be substantial. In the end the sub-inspector agreed to sound that officer. He deferred the Seth's arrest; and bade him return after a couple of days.

The sub-inspector called on the Superintendent of Police next day, but naturally no mention was made of the case. When the Seth came again, the sub-inspector told him that the matter had been settled, though for a goodly sum. To save his honour and that of his family, the Seth agreed to pay; but he asked for some guarantee that the matter would really be dropped. "I have my officer's instructions" replied the sub-inspector, "to destroy the anonymous petition and his order, no sooner payment is made." This was satisfactory. The Seth paid, and the paper was burnt in his presence.

Thus did the sub-inspector, in the name of his Superintendent of Police, earn a goodly sum of money. The head constable peshkar shared in it. But the Superintendent of Police probably never learnt anything of the matter.

III

HOW A MURDERED CHILD WAS FOUND.

An old sub-inspector related to me a story of his early days, but represented himself merely as

a passive spectator. It all happened not later than the nineties.

In a certain district in the north of the province was a thana; and the thanadar thereof had fallen in a moody humour, being pressed for need of money. His head constable (in those days the investigation of cases was done by head constables)—a big, stalwart fellow—noticed the worried look on his superior and asked the reason. "What" he exclaimed, on hearing the cause of the malady, "Two thousand rupees! Why worry over so small a matter? You shall have the money."

A few days later it happened that the child of a poor weaver disappeared. The boy had been wearing gold ear-rings, and it was feared he had been murdered for them. The police made a search and the boy was found in a secluded spot by our friend, the head constable and another. The discovery of the dead body was kept secret from all but the weaver, who was called to identify it, and then paid for his silence.

Now, in that village, lived a certain rich money-lender; and he also had a sugar manufactory. A witness was 'found' who had seen the boy crying there; and had also heard the irritated

sugar-manufacturer shout out, "He will not stop crying. Throw him into one of the vats." Being a truthful man this witness would say no further. The boy had indeed been taken inside; but though his crying had ceased, the meticulous witness refused to draw any inference from that fact. He could not tell an untruth.

But the evidence was enough to create a suspicion, and the head constable called on the money-lender to allow his house to be searched. With a readiness born of a clear conscience the mahajan readily assented. The house was thoroughly searched. No ornaments were found corresponding to what was lost; and the police were about to depart when a curious constable dipped a crooked stick into a vat of molasses, and fished up the body of the murdered child!

We shall not inquire too closely how it got there. But it was there; and the weeping weaver recognised the body of his beloved child. The ear-rings, of course, were gone. The money-lender was mute with awe. A compromise was made. There was no discussion. Two thousand rupees were asked for and paid on the spot.

A note was made in the special case diary that the body of the boy was found in a well, and

that it probably was a case of accidental death. The enquiry was closed. Every man had had his price; and the money-lender had been saved from the jaws of death.

IV

FROM A CONFESSION.

This story is more fully told under the heading of 'A cold blooded Murder' in another part of this book. It came out in the course of a confession by one Lachhman barhai.

A well-to-do brahmin named Rup Ram was murdered one night. His skull had been smashed by a hammer. He had been financing a litigation by one Lekhraj against Radha Kishan Brahmin. It was strongly suspected that Radha Kishan was responsible for the murder. But direct evidence there was none.

What follows is an abbreviated account of what Lachhman told me, though translated into the third person.

When the murder was reported at thana, the darogha and his second officer came to investigate. Every one from the village and from surrounding ones was called up. Everyone said Rup Ram must have been murdered in consequence of this litigation over Lekhraj's property.

Radha Kishan, and Lachhman were among those called up. The darogha said to Lachhman, "Look here. You were bound over for a year; and I know you are under the thumb of Radha Kishan Mukhia. Find out who has done this; or I shall send you to the gallows." For three days Lachhman was detained by the Police, being allowed to return home only for the night.

Lachhman was well beaten ; but held his peace. Eventually he said to Radha Kishan, "Bhai, they beat me much. I shall now give your names." But Radha Kishan and Karan Singh replied "Don't worry. We shall spend money and save you." They then spoke to the thanadar saying "Take some money and let him go. Why do you persecute him?" Radha Kishan promised to pay the darogha Rs. 100 and Lachhman promised to pay him another Rs. 25/. Then the darogha said

to Lachhman "very well. I shall send for you to the mauqa; but shall let you off."

The darogha added that he would not take the money direct; but it should be sent to him through Sirdar thakur of another village. He then went off to the thana. Later Sirdar Singh came along. As Radha Kishan did not have the money, he borrowed Rs.100/- from Karan Singh by executing a ruqqa. Lachhman sent his brother Chhote Lal to the city with his wife's ornaments which were sold there for Rs. 25/- to Roshan Lal saraf. "Chhote Lal lives apart from me" said Lachhman "and my going to Rashat might have roused suspicion".

Sirdar Singh passed the Rs.125/ on to the thanadar. And the thanadar reported there was no evidence.

V

ROOTING OUT CORRUPTION

Mt. Mathuri was a lonely widow. She had let all her fields to Lallu sonar condition he

Police stepped out and rushed towards the office, commanding every one to stand still where he was. The Congressman and I followed. We searched the persons of the dewan, the literate constable and another constable then in the office. We also searched the almirah in the room. Nothing incriminating was found.

Then we noticed a mosquito net lying on the dais between the dewan and his literate clerk. It belonged to a constable who was proceeding to headquarters and wished it kept in the malkhana till his return. The Deputy Superintendent picked it up, and beneath it were found 23 rupees, ten of which were marked ones. Sadla now showed us the pair of patas and the pungri, which he said had been returned to him by the dewan after he had made payment.

We now questioned the dewan and his literate clerk separately, and asked how this money had got beneath the mosquito net. Neither heard the statement of the other. Both declared that shortly before our arrival Lallu had come to speak to them. He had sat near the mosquito net and must have slipped the money in there surreptitiously. In the end I concluded that this must have been the truth.

To have held otherwise was to have postulated that the police was aware of the trap which had been laid for them. There was no collusion between the dewan and his literate constable before they made their statement to me. Lallu and Sadla had feared a prosecution; and had had reason to try and get the police into trouble. This was further borne out by Sadla producing the patas and the ornaments which had been mentioned in the receipt granted by the mukhia; and no sane policeman would have kept them in his possession after that.

It was a detestable business to try and trap ones subordinates like this. I concluded my report with the following words:—

“We live in changing times and the slogan ‘Inqilab Zindabad’ well represents the spirit of the age. Hitherto it was the practice to regard the Government official as the oppressor of the people. But now a new doctrine seems to be arising that the Government servant is legitimate shikar for the public. This is the moral I drew from this enquiry.”

VI

DIAMOND CUT DIAMOND.

I often tell the tale of the early days of Congress power when no man's integrity was safe from attack. The hero was a sub-inspector of police. I did not care for him; but did admire his resource on this occasion.

A murder was reported. An interested party approached the sub-inspector with five hundred rupees. Not being a fool, he accepted it. But he placed only four hundred in his pocket, and deposited the rest in the police malkhana. "So and so came to me this morning," he noted in the general diary, "And offered me a hundred rupees for reporting the result of the investigation as he desired it. The money has been placed in the malkhana. The matter might be investigated."

The Superintendent of Police wrote to me, pointing out that as the offence was a non-cognisable one, I should authorise investigation by the Police. This I willingly did. But later the same officer seems to have realised that investi-

gation might mean ugly disclosures. He then asked me to withdraw my order, as a prosecution would be mere vindictiveness. It would be sufficient if the hundred rupees were forfeited to Government. In any way I agreed with him; and so gave no trouble about withdrawing my order.

VII

CORRUPTION BUT NO INJUSTICE

About 1916 an enquiry was held on the conduct of a subordinate Judge. It transpired that he used to take from both sides. Then he decided the case quite justly, and refunded the money paid by the losing party.

More recently I know of a Bench Magistrate who, after eliciting the opinions of his brothers, sent for the party who was to win and accepted a solatium from him. Then he delivered judgment in accordance with the dictates of justice.

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There was a tale of an old deputy collector who took bribes in broad daylight in his courtyard. But he always had candles burning around him. Any witness, who unwittingly mentioned this detail, was easily denounced. What need for candles in broad daylight ?

A notorious case of corruption was tried by me not long ago ; but it really was one of extortion, and has been dealt with under that head.

Here is a tale from America. A man was tried by jury for an offence said to have been committed in bright moonlight. Everything seemed to be going against him, when his counsel triumphantly drew out and flourished a calendar, showing there had been no moon that night. The man was acquitted.

Later the lawyer presented an exorbitant bill. "That seems rather steep," said the client. "It may look so" replied the counsel, "but only half of it comes to me." "How did you spend it anyway ? Bribing the Jury ?" "What" shouted the indignant lawyer, "Do you mean to insult me by suggesting

that." "I am sorry to offend you, but how did you spend so much?" "Why?" replied the counsel "on having that calender printed."

VIII

THE LORD WILL PROVIDE

A certain deputy collector was known to be corrupt. He was placed in charge of the Treasury. Only petty cases came to him, among them those under the Railway Act. Cases under the Railway Act are usually trifling ones; but, as luck would have it, an important case came up.

So important did the Railway authorities consider it, that they asked the trial magistrate to recommend a counsel for its prosecution. He recommended a friend of his; and the Railway retained him at fifty rupees a day.

That case then ran through seventy hearings. Only a modicum of work was done each day. The slightest pretext was good enough for an adjournment. Rumour had it that a share of the counsel's daily fee went to the court!

Fortune favoured the magistrate in another respect as well. The accused appeared late in September and most of the trial took place in the last quarter of the calender year. Since no explanations of delay have to be submitted for that quarter, the case did not come to the notice of the High Court.

BOOK VI

TWO NOTABLE CASES.

PART I

SOME CRAZY THAKURS

I

A LEGAL FICTION

In a district in which I served over twenty years ago there lived a family of half-demented Thakurs. Their houses were close together; but their estates had been divided into three parts—one each held by two brothers, the third by their three nephews.

Despite their affluence they lived in miserable fashion. Their tenants had no respect for them. During a political upheaval these zamindars had tried to get several tenants into trouble by accusing them of being non-cooperators. And thus had won the regard of those in authority.

It was after these troubles had subsided that I was posted to the district. Many complaints of oppression come to me. The agrarian laws had just been revised in favour of the peasantry ;

and these Thakur gentlemen took early steps to fortify their position as zamindars.

They 'let' large areas of their zami dari to their wives, sons and daughters, thereby reducing the actual cultivators to the status of sub-tenants. This prevented the actual cultivators from asserting the rights so recently accorded to them by the legislature.

I swept away these fictitious entries ; and restored the cultivators to their rightful status. I regret to say that an Officiating Collector reversed my orders ; but the Commissioner restored them. Since then I always have been watchful of such tactics on the part of zamindars.

II

UNCONTROLLED HERDS

These Thakus kept four elephants and vast herds of cattle ; but employed not a single mahout or herdsman. It was said that when their elephants were borrowed by officers, they tempora-

rily employed a man ; but took from him a share of the bakshish he got.

The cattle were let loose to graze where they would. The neighbouring cattle-pounds thrived on them. Once even an elephant was impounded, though released almost immediately after. Some years previous to my arrival, big cases had been run on such complaints ; but ultimately, on strong persuasion by leading raises, the papers were filed.

A few months after my arrival such complaints reached me ; and I was asked to take action under Sec. 110(d) Cr.P.C. and bind over these Thakurs as habitually addicted to committing mischief. This I did—the only time I have proceeded under that sub-section. Pressure was put on me by those whom the Thakurs had pleased during the non-cooperation epoch ; but I held my own.

After a long trial I pronounced judgment, binding over all the accused for a period of one year. In the case of one (the most sensible one) I directed, under Sec. 120(2) Cr. P.C., that the

term should commence after a week. This enabled him to find security, and to have it verified before he could be taken into custody.

With the others I proceeded differently ; for I felt in my bones that, officialdom being strong in their favour, they would eventually escape. I demanded security from them with immediate effect. Two raises, whose presence had been arranged, offered it ; but I insisted on verification by the tahsil and the thana, both situated over twenty miles away. Pending this the four men were sent to the jail.

III

A NIGHT IN JAIL

In frantic haste, their counsel secured orders for bail from the Judge ; and brought it to my bungalow after court hours. I noted thereon that, though bail for attendance in court had certainly been granted, it was not clear that the men could be released without security for good behaviour.

This point, I might mention, is still not clear either in law or in practice. •When a man is bound over under the preventive sections, and the appellate authority allows bail; should he, in the absence of clear orders to this effect, be released without security on mere bonds for personal appearance?

The counsel returned to the Judge, who however refused to add anything to his order. He advised the counsel to get it executed by some other magistrate. It was late in the evening when another magistrate weakly (and I think illegally, for it was I who was seized of the case) issued orders to the jail for release of these four men.

But the Fates were against them. Rule 90 in the Jail Manual provides that if an order of release reaches the jail after lock-up hours, the prisoner should not be released till the following morning. The counsel referred to the Superintendent of the Jail, who was, however, too great a martinet to abrogate the rule.

And so these four 'raises' spent a night in jail. A rascally prosecuting sub-inspector (I have referred to him elsewhere also) had accompanied them there. He had informed the Jailer of their

respectability, and asked him to be kind to them. This was the worst thing he could have done for them. Next morning I heard dim stories of how they had been treated that night

Two of the men were acquitted on appeal. In the case of the others, who had on occasions threatened tenants with their guns, the sentences were upheld.

Much to the discomfort of these gentlemen, I made it a practice to camp near their houses every winter. They did not misbehave themselves again so long as I was in the district.

PART II

THE KUNWARPUR CASE

I

THE RAJAH AND THE ESTATE

Raja Harihar Bakhsh Singh, taluqdar of Kunwarpur, held no less than 62 villages and parts of villages, of which at least 57 lay in Sitapur district. I believe the capital value of his property exceeded half a crore. He, however, maintained little staff; and his principal servant, Duniapat, known as the dewan, drew only three rupees a month, albeit he was allowed to take nazrana from tenants.

The Rajah lived in a massive fort or garhi. It was divided into an outer and an inner portion each built around a yard. In the outer portion, was a reception room. Also here was the 'office.' The record room was huddled with Hindi papers, kept without any arrangement. In one of these outer rooms was caged an African lion which had been born in captivity.

The inner apartments were surprisingly mean. The actual residential portion was a long room, with two or three doors, all opening into the yard. At either end of this long room were wooden doors opening into small dark kothris without any other means of light and ventilation. It was in these three rooms that all the cash and valuables were stored and buried.

The Rajah died on 18th February, 1924. He left no issue, and had executed no will. The nearest collaterals were very remote in degree. For the time being the estate devolved on his widowed Rani. She proceeded to waste the accumulated cash on temples at Ajodhya and elsewhere; but after she had thus spent about a lakh, she was stricken with small-pox and died on 23rd June, only four months after her lord.

II

THE DEATH OF THE RANI

That morning I was at tahsil head quarters, about ten miles from Kunwarpur. I proceeded

there at once in company with the Tahsildar. We went by ekka, the only means of conveyance available. At the garhi we found a large number of people, probably tenants and clansman of the late Raja, some at least of whom must have aspired to succession.*

Our first anxiety was to despatch the body for cremation. Connected with this was the question who should be the mun-phukka. The mun-phukka is usually a close relative who has the right to light the funeral pyre. This fact is sometimes used as evidence of title to succession. Fortunately no trouble arose; and the duty was, by common consent, assigned to one Arjun Singh, a collateral to whom the late Raja had paid the munificent allowance of three rupees a month.

The first legal proceedings after such demises are mutation cases in the tahsil. Under the Land Revenue Act such cases are decided on the basis of possession—a word variously interpreted, and leading to much litigation. As already pointed out, there was no collateral successor within many degrees; but we had to be careful.

The late Raja had a widowed chachi or aunt, the Thakurain of Saraura, who aspired to succession. Under Hindu Law a widow may not inherit; so she determined to establish possession. She arrived at the garhi a few hours after I did; and after the body had been despatched laid to rest on the very couch on which the Rani had died of small-pox !

Her trouble was in vain, however. For I had already issued orders under Sec. 145 Cr. P.C. attaching the entire estate. No question of possession by any heir could arise.

III

BURIED TREASURE

We soon discovered where the cash was kept. It had been placed in huge pitchers which were buried in the four corners of the long residential room. Close friends had seen the Raja and the Rani light *dias* at these corners on occasions such as Dewali, when prayers are offered to the Goddess of Money and Fortune.

We dug up these corners. Buried there we found large metkas or earthen pitchers, containing in all three lakhs of rupees mostly minted in 1840. In the fourth corner was a smaller pitcher filled with gold mohurs of the time of the Moghuls, and also ornaments and small bricks made from them.

There was also much gold and silver jewellery in the boxes—ornaments for almost every part of the body. (It was said that if a gilded *sil*, or slab of stone, were placed on the head of an Indian woman, she would be delighted and not complain of the weight.) A costly canopy and a silver howdah were also there.

What I most admired (or rather the only piece of jewellery I admired) was a ring with a large diamond. The Raja had purchased it for Rs.16,000 from a jeweller in Lucknow. I also admired his splendid motor-car; and had the use of it so long as the estate remained under attachment.

I had issued orders under Sec. 145 Cr. P.C. attaching the entire estate. But this order could cover only the immoveable property, that is the villages and the garhi. I could not legally have

attached the moveables, such as the cash and the jewellery. So all this was placed in a room, on which I placed an official lock. Anyone interfering with the door, interfered with the garhi, and so violated my order. This was however only a technical precaution. For a guard of armed police came from district head quarters, to watch over everything.

In the next two chapters I shall give a resume of the history of the family, which was embodied in the judgment, which I subsequently delivered in the mutation case.

IV

HISTORY OF THE ESTATE.

—MOGHUL AND PRE-NAWABI TIMES,

It was in the year 1859, when Oudh had hardly passed out of the regime of martial law. Mr. Thomson, Deputy Commissioner of Sitapur issued a rubkar or vernacular order to all his Tahsildars.

“Under instruction from the Chief Commissioner you are required to prepare a history of all Taluqdars paying a revenue of Rs. 5,000 or more. This must be done quickly. If taluqdars delay in giving information, enquire from their agents and explain that this enquiry is being made merely for the purpose of preparing family histories, and for no other.”

M. Narain Prasad, Tahsildar of Bari (the headquarters has since been shifted to Sidhauri) did his duty well. He complained of lack of co-operation from the taluqdars ; but managed to prepare quite an interesting history. This agreed remarkably with the histories dictated by zamindars three or four years later in the first regular settlement of land revenue in Oudh.

I proceed now to give M. Narain Prasad's history of the taluqa of Kunwarpur-Saraura.

In the reign of the Emperor Akbar, when he still held his court at Delhi, three brothers Pahladeo, Phuldeo and Maldeo by name, Panwar thakurs by caste, left their native town of Dhara-nagri, in the modern state of Gwalior, to seek their fortunes in the court of the Grand Moghul.

Pahlandeo rose to high rank in the Imperial cavalry ; and for their valour on the field of battle, Pahlandeo and Phuldeo were awarded a jagir in the Subah of Oudh. But the royal decree lacked definition ; and it was left to the two brothers to gain possession of the estate in the manner they best could.

Pahlandeo had a friend in Oudh, Tilok Chand, Kanungo of Manwan , no mean office in those days. 'Aided by his influence, and by the arts of diplomacy, and the power of their swords', the brothers proceeded to carve out estates for themselves.

Pahlandeo established himself at Itaunja, formerly held by kurmis ; and is the progenitor of the present Raja there. Phuldeo took possession of Mahona, which had hitherto been held by kachhis. Their third, and youngest, brother followed after some years.

Maldeo dispossessed the Bhat zamindar, Dhan Singh Rai, and became taluqdar of Rewan. Within a year he also seized the taluqas of Kunwarpur Jaipalpur, Nawagaon and Kundri from Dharam Das Jat.

" " Those were days of opportunity ; and it was the strong arm and the masterful personality

which prevailed, not the possession of wealth to finance litigation.

Thus arose in Oudh the three great houses of Dharanagri Panwars—Itaunja, Mahona and Rewan. A descendant of Pahlandeo still sits on the gaddi of Itaunja. Mahona has dwindled into insignificance. Rewan, divided, is now principally represented by the modern taluqa of Kunwarpur Saraura.

Maldeo died after a rule of twenty-five years. His son Karandeo had either predeceased him or survived him only a short while for his name appears in only a few of the family histories. He left two sons, Hari Das and Nanda Das. In 1656, a dispute between them resulted in partition of the estate.

And so the domains of Maldeo were split into the taluqas of Rewan and Lahu-Rewan. The latter name, which means Younger Rewan, gave place to the more popular one of Kunwarpur.

The descendants of Hari Das are now chiefly represented by the taluqdar of Nilgaon, Rewan itself having shrunk to small dimensions.

The estate of Lahu-Rewan, which went to Nanda Das, consisted of the taluqas of Nawagaon and Kunwarpur. So Nanda Das was the first taluqadar of Kunwarpur. He died in 1674, or as Tahsildar Narain Prasad quaintly put it, 'the sojourner took his departure to the world eternal.'

Nanda Das had two sons, Girdhar Singh and Jagat Singh.

Jagat Singh, who was the younger brother, seems during the life-time of his father, to have embraced Islam under the name of Sarwar Khan. He thereby lost all right to inheritance; but was adopted by Zimast Khan, zemindar of Garhi Hasanpur. (Zimast Khan was himself descended from Malik Partab, the Hindu zemindar of the taluqa of Jandhama). The descendants of Jagat Singh alias Sarwar Khan all Muslims, still reside in Gahri Hasanpur. In 1924 they made a feeble claim to a share in the estate of Raja Harihar Baksh.

Girdhar Singh, who now held the whole of Lahu-Rewan, adopted the title of Rai, which is borne to this day by the eldest member of the eldest line of his descendants.

Apart from the Muslims just referred to; all claimants to the estate of Raja Harihar Baksh in 1924 were descended from Girdhar Das.

Girdhar Das had two wives. By the first he had four sons, Rai Gaj Singh, (the eldest of them all) , Kesri Singh, Hans Rai and Harbans Rai. By the second he had Shahji and Bhim Singh. The latter was the progenitor of Raja Harihar Baksh Singh.

Shahji was the most renowned of the six brothers. He surpassed them all in manliness and intellect. His prowess has passed into local legend.

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Maldeo, who had lived early in the reign of Akbar, when the Moghul power was consolidating, had carved out a domain. The reigns of the three succeeding Emperors, Jahangir, Shah Jahan and Aurangzeb, were too settled to be favourable to the forcible expansion of the taluqa. But now we have reached the declining years of the Moghul Empire; Shahji was well fitted to take advantage of the troublous times.

By the might of his arm and the arts of diplomacy, so runs the history of Saraura, he expanded the estate. He seized some 21 villages

of Ilaqa Parewa Jal from Ghansham Das, Janwar Thakur; and others from brahmins, thakurs, ahirs and Mussulmans. In all he added 48 villages to the 15 he and his brothers had inherited from their father.

It was a sign of the times that he had wrested the two villages of Garhi Ghazipur from the local Kanungo; and, doubtless many of his acquisitions were made not by force, but by willing submission of smaller landholders, who were glad to secure the shelter of his name.

Shahji lived to a good old age; and was living in 1777 A.D. Legend has it that a sword found by us in the property of Raja Harihar Baksh Singh, had been presented to him by the Padishah at Delhi,

After living jointly for eighteen years, the six sons of Girdhar Das partitioned the estate, inherited from him and enlarged by Shahji. Shahji and Bhim Singh retained the taluqa of Saraura Kunwarpur; giving that of Parewa Jal to their four half-brothers.

We shall in turn relate the fortunes of the two sets of half brothers.

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Rai Gaj Singh, eldest son of Girdhar Das now became taluqdar of Parewa Jal. Of his three own brothers, Kesri Singh left no issue. Harbans Rai and Hans Rai were given the villages of Muzafferpur and Bijwamau as guzara. The descendents of the former still live in Muzaffarpur. Those of the latter cannot now be traced. They had defaulted in payment of their revenue to the Nawab of Oudh, and been expelled.

Rai Gaj Singh had two sons. The younger, Sadhan Singh, was given Nayagaon as guzara. The elder, Rai Madan Singh, predeceased his father. He left two sons, of whom the younger, Chait Rai, was given the ilaqa of Kantain, while the elder, Rai Pirthi Singh inherited the taluqa.

Rai Pirthi Singh had two sons. The younger, Faqir Singh, was given the ilaqa of Shahpur; but was slain in a fight with a Nanga Faqir. The elder was Rai Kakulat Singh. He had five sons. In two cases the line is now extinct; but descendents of the other three were evident in 1924.

When Raja Harihar Baksh Singh died in 1924 Rai Jagmohan Singh of Parewa Jal was the only one of the numerous contestants who put

forward a distinct claim of inheritance as the eldest of the eldest line. He was seventh in descent from Rai Pirthi Singh, and tenth from Girdhar Das.

V

HISTORY OF THE ESTATE

—NAWABI AND BRITISH TIMES

We must now trace the fortunes of Shahji and Bhim Singh and their descendents.

In 1758 Shahji had founded Saraura, which name gave place to that of Kunwarpur as the title of the taluqa.

Bhim Singh and his son Sadan Singh both predeceased Shahji. Shahji was a warrior and possessed of a sense of honour. He could easily have taken the entire taluqa to himself; but he preferred to share it with Dund Shah, son of Sadan Singh.

Local tradition describes Dund Shah as a tyrant of the worst type. In 1777 he was killed

in a fight with the former zemindars of Yarpur; and, so Tahsildar Narain Prasad picturesquely remarks, 'was consigned to hell' (*Jahannum men dakhil hua*). Shahji wreaked terrible vengeance for the murder of his grand-nephew. Yarpur was raised to the ground; and on its ruins was raised Dundpur. Sheo Bakhsh Singh, son of Dund Shah was created master of the ilaqa.

A few years later, we do not know exactly when, Shahji died, the greatest of the descendants of Maldeo.

After Shahji's death, his son Gombha Singh remained for twenty-five years in joint possession of the taluqa with Sheo Bakhsh Singh and his descendents. He could not have died earlier than 1802 A. D. And then Basti Singh, grandson of Sheo Bakhsh Singh ill repaid the generosity of the great Shahji.

He expelled Mohkam Singh, son of Gombha Singh; and took sole possession of the taluqa of Kunwarpur Saraura. The descendants of Mohkam Singh, that is of Shahji, sank verty and had to depend on the meagre of the successors of Basti Singh. It was

over a hundred years later that a strange turn in the wheel of destiny, gave them their own again.

It was during the time of Basti Singh that Asaf-ud-Daula, Nawab-Vizir of Oudh, shifted his capital from Fyzabad to Lucknow; and our Panwars came within twenty miles of the central power. Before this the taluqdars had been petty kings; but now we find Basti Singh described as a kabuliyatdar.

The histories omit mention of facts so humiliating; but a document found at Kunwarpur showed that Basti Singh and his son Baldeo Singh received severe treatment from the officers of the Nawabi Government.

In 1838, Basti Singh resisted by force of arms the Chakladar of Bari (the equivalent of the modern Tahsildar of Sidhauri) who had come to collect revenue. In the struggle he was either killed or died by his own hand. His son, Baldeo Singh, continued the struggle; but was seized and cast into prison where he died the following year.

Balwant Singh, second son of Basti Singh, then presented himself before the Nawabi court;

and after a while paid up the revenue demand. In 1842 A. D. (1249 Fasli) he was granted the *kabuliyat* for the entire *ilaqa*. This was recognised by the British Government, after the annexation.

It is not clear whether Balwant Singh took part in the great rebellion of 1857. In legal theory, however, the estate of every *taluqdar* in Oudh was thereafter confiscated by Government. Exception was made only for four loyal *taluqdars*; but Balwant Singh was not one of them.

Later as an act of grace, Government restored these estates to their original owners. But Balwant Singh had died in 1858; and the summary settlement of revenue in 1859 was made with his son, Ganga Bakhsh Singh. In the first regular settlement, which followed in 1864, Ganga Bakhsh had the magnanimity to enter into an agreement with his younger brother, Uma Prasad, and his nephew Bisheshar Singh, son of Baldeo Singh. Ganga Baksh retained one-half the estate, the other two took one quarter each.

The line of Uma Prasad and Bisheshar Singh became extinct in the male line. But the widowed

daughter-in-law and grand daughter-in-law of the former, known respectively as the Thakurains of Saraura and Alaipur, were living when Raja Harihar Bakhsh Singh died in 1924. Each claimed succession on the ground that by family custom, widows were entitled to inherit.

The Taluqdari Act (I of 1899) was designed to create impartible estates ; but it applied only to property acquired up to the time the Act was passed. New acquisitions are governed by the personal law, in this case the Hindu law. In the garhi at Kunwarpur were found two sanads, one in English and one in Urdu, whereby the British Government recognised Ganga Bakhsh's status as a taluqdar.

Ganga Bakhsh Singh had an only son, Harihar Bakhsh Singh, who was granted the title of Raja. He lived parsimoniously ; but so added to his possessions that the non-taluqdari portion came by far to exceed the taluqdari, both in value and in extent.

On 18th February 1924 Raja Harihar Bakhsh Singh died suddenly. He had left no issue, and

had executed no will. The nearest collaterals were remote in degree. His widowed Rani took over the estate in life-interest. She died of small-pox on 23rd June 1924.

VI

A ROMANCE

A multitude of claimants arose for the estate—75 in all, of whom 37 were the Muslims from Garhi Hasanpur who claimed descent from a Hindu ancestor. The 38 Hindus came, from Parewa Jal (3), Nawagaon (15), Kantain (5), Shahpur (2), Muzaffarpur (6). There were also the Thakurains of Saraura and Alaipur; Arjun Singh, who established descent from Shahji, and Sripat Singh, who ultimately was held to be an imposter. The remaining five were unimportant.

Many of these claimants had no money for litigation; and some sold their shares for ridiculous sums, in one case for Rs. 150. But there is no law against champerty in India; and these transactions added substantially to Government Stamp Revenue.

The estate fell into two portions, the taluqdari and the non-taluqdari. The former was what the Rajah or his ancestor had held when the Taluqdari Act was passed in 1869. The latter was what had been acquired since then. In the former succession went strictly by the rule of primogeniture ; the latter was governed by the personal law, in this case the Hindu law.

After much intensive study of the documents, I gave a finding which was supported by the Chief Court in the civil proceeding which followed.

The taluqdari part of the estate was decreed to Rai Jagmohan Singh, the eldest of the eldest line. Not having had the money to finance the litigation, he had sold three-fourths of his rights. He, however, retained the garhi in his share.

Before that Rai Jagmohan Singh had been a horse-carrier. The story went that he was scraping grass when I reached court to pronounce orders. He came in with his *khurpa* in his hand ; and learnt he was taluqdar of Kunwarpur !

The more valuable, non-taluqdari portion of the estate went to Arjun Singh. , An entry in a document filed by another party clinched the question by proving him to be the nearest collateral. And thus it came about that 'most' of the estate went to a relation to whom Raja Harihar Bakhsh had paid the princely allowance of three rupees a month.

It may here be recalled that Arjun Singh was descended from Shahji. His great-grand-father Mohkam Singh, had been deprived of his inheritance by Basti Singh, great-grand-father of Raja Harihar Bakhsh Singh.

" Basti Singh and his descendants to the third generation usurped the gaddi of Shahji. But their fortunes had been troublous ; and it was destined that their line should extinguish in the person of Raja Harihar Bakhsh. After a hundred years of travail, one of the line of Shahji laid claim, and the best claim, to such part of the estate as had not been wrested from the application of the Hindu Law. The great law of Karma has been vindicated."

VII

THE FORGERY.

Among the claimants to the estate was one Sripat Singh." He was a poor tenant, who sung alhas well ; but the most respectable witnesses declared he did not belong even to the Raja's clan. He did not trouble to put in his application personally ; but sent it by post on 18th July ; and when first questioned by me, scarcely seemed to know his ancestry.

On 21st August, two men, Ram Narain and Jang Bahadur, took him to a Mukhtar and asked that gentleman to draw up a written reply ; but even then no details were given of the pedigree. "That will be supplied later," the two men told the lawyer. The truth was that a conspiracy was being hatched in the Record Room of the Collectorate.

On the 5th September, Ram Narain came again to the Mukhtar ; and took him to the Record Room to inspect a file dated 1859. From the lawyer's statement Ram Narain appears to have known all about it already. Immediately after, urgent applications were given for copies of

certain papers on the file. These copies were filed in court that afternoon, which was last date I allowed for documents.

One of these copies fell like a thunderbolt on the other parties. It purported to be a statement made in 1859 by Ram Bakhsh Singh, grandfather of Arjun Singh, to whom the non-taluqdari portion of the estate eventually went. The statement, if genuine, was one of six recorded in an enquiry as to certain customs among the landed gentry of Oudh.

According to this statement Arjun Singh was sixth (not fifth as he alleged) in descent after Shahji. It also showed that Sripat's grandfather was great-grand-son of Shahji which placed Sripat fifth in descent from him. It also mentioned that Shahji was the eldest son of Girdhari Dass. In brief, if these statements were genuine, Sripat was heir to the taluqdari and non-taluqdari estate.

I made a summary enquiry regarding this document and denounced it as a forgery. Ram Baksh was not a taluqdar like the other deponents. His statement was far more expansive than any of the others; and seemed almost

designed to establish Sripat's case. Its very genesis had been suspicious. Apart from this the writing had been spaced so as to cover exactly as much space as the paper provided.

There was another suspicious feature; and one I did not observe till the case had been decided. The corner at the end of the statement had been torn off leaving only a portion of a signature of which other examples were available. Apparently a tracing of an original had been placed on this paper; and its outline marked with dots. Then these dots were connected with lines. The dots were apparent to the naked eye. The forgery was patent.

Sripat, as already said, was in indigent circumstances; but certain people who supported him were known to be litigious; and in fact known to foster litigation to thrive on it themselves. And five days later Sripat sold seven-sixteenth of his supposed rights to certain gentlemen who had often bought up contentious claims.

I denounced Ram Baksh's statement as a forgery. The Collector brushed aside the question by granting mutation to the widowed lady who

had slept in the Rani's bed shortly after her death. The Commissioner restored my order. On the Civil side the Chief Court upheld* all my findings, both as an original court and in appeal. But I am anticipating.

Some time after I had decided the mutation case, I received an anonymous letter. It was brief but contained details such as carried conviction; It mentioned that Ram Narain and Jagmohan Singh (the two who had taken Sripat to his lawyer) had discussed the matter, and decided to have a forgery committed in an old record in the Collectorate Record Room. This they got out with the help of an official named Bhagañti Prasad. They called three men in succession asked them to show how they could write, and then decided on a fourth man. His name was Irshad Husain.

After consultation with the Deputy Commissioner I proceeded to make an enquiry. At first this was done in secret with the help of a Naib Tahsildar, Mr. Islam Mohammad Khan, who was really wonderful in the way he got people to make statements to me. It was during my winter

tour; and having the use of the estate car, I would leave my camp late every evening, visit the dak bungalow at the tahsil, and sometimes also lonely places, where witnesses could confide in me. The people wondered at my nocturnal wanderings. Then one morning we struck. Racing about on the car we arrested Ram Narain, Jagmohan Singh and Sripat. I had hoped the last would confess, but he did not. House-searches led to no result.

After this I made an open enquiry; and then only did I realise how heart-breaking an investigation could be. I knew men of respectability and education, who were aware of certain facts; but they refused to be drawn out. In the Record Room I had somewhat better success. I got evidence, though of an indirect nature; and finally Bhagauti Prasad, the Record Room official was arrested. His house was searched, but nothing was found.

I tried hard to get hold of the actual forgerer. It was said he was of a *katcha miraj*, and might confess. But he was spirited away to Nepal. Some months later, after I had left the district, he was arrested. But the criminal case against the others had by then been decided. In any case

the man determinedly refused to give samples of his hand-writing.

I made all these enquiries, as I held, under sec. 476 Cr.P.C. read with sec. 195(2) (c) Cr.P.C. No rules of procedure or for recording evidence are there laid down. And then, despite much opposition I made a formal enquiry myself under sec. 478 Cr.P.C.

Finally I transferred the proceeding from myself as an Assistant Collector to myself as a Magistrate; and committed all the accused to the Court of Session. There I was cross-examined for two and a half days by no less eminent a counsel than Mr. Hari Mohan Roy of Allahabad. Had I not had so complete a grasp of the facts, I would certainly have broken down.

In the end the Judge acquitted all the accused, though he held the document was suspicious. A Government appeal was launched; but was subsequently withdrawn. I had refused to colour up the evidence in any way. A Public Prosecutor told a friend of mine that the mixture of some *non-masala* with the truth is essential, if any case is to succeed. And I agree.

